



Replacement Pages
Massachusetts Contingency Plan
310 CMR 40.0000

6/20/2003

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- (2) As used in 310 CMR 40.0000, words in the singular also include the plural.
- (3) No provision of 310 CMR 40.0000 shall be construed to relieve any person from any obligation for Response Action Costs or damages related to a site or disposal site for which that person is liable under M.G.L. c. 21E or from any obligation for any administrative, civil or criminal penalty, fine, settlement, or other damages.
- (4) No provision of 310 CMR 40.0000 shall be construed to limit the Department's authority to take or arrange for, or to require any person to perform, any response action authorized by M.G.L. c. 21E which the Department deems necessary to protect health, safety, public welfare or the environment.
- (5) No provision of 310 CMR 40.0000 shall be construed to imply authorization by the Department to any person other than the Department, or the Department's employees, agents or contractors, to enter any real or personal property not owned by him or her to carry out a response action, or otherwise injure or interfere with any other person's rights or interests in real or personal property, without that person's consent.
- (6) The provisions of 310 CMR 40.0000 are severable and if any provision or its application to any person or circumstance is held invalid, its invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.
- (7) No provision of 310 CMR 40.0000 shall be construed to relieve any person of the necessity of complying with all other applicable federal, state or local laws.
- (8) No provision of 310 CMR 40.0000 shall be construed to create in any private party a right to publicly funded response or enforcement action or to create any duty of the Department to perform any response action at any particular time.

40.0008: Computation of Time Periods and Deadlines

- (1) General. Unless otherwise specifically provided by law, 310 CMR 40.0000 or any order or determination issued pursuant to M.G.L. c. 21E or 310 CMR 40.0000, any time period or deadline prescribed or referred to in 310 CMR 40.0000 or in any order or determination issued pursuant to M.G.L. c. 21E or 310 CMR 40.0000 shall begin with the first day following the act which initiates the running of the time period, and shall include every calendar day, including the last day of the time period so computed. If the last day is a Saturday, Sunday, legal holiday, or any other day on which the offices of the Department are closed, the time period shall run to the end of the next business day.
- (2) Determining Date of Issuance of Document. Except as provided by 310 CMR 40.0008(5), each document given by the Department to a person pursuant to M.G.L. c. 21E and/or 310 CMR 40.0000 shall be deemed to be issued by the Department as follows:
 - (a) if served in hand, the document shall be deemed to be issued on the date when delivered:
 1. personally to the person; or
 2. personally to any officer, employee, or agent of the person authorized by appointment of the person or by law to accept service; or
 3. at the person's last known address in the Commonwealth; or
 4. at the last known address of any officer, employee, or agent of the person authorized by appointment of the person or by law to accept service; or
 - (b) if given by mail (either regular mail or certified mail, return receipt requested), the document shall be deemed to be issued on the date of mailing.

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(3) Determining Date of Receipt of Document Issued by the Department. Each document given by the Department to a person pursuant to M.G.L. c. 21E and/or 310 CMR 40.0000 shall be deemed to be received by said person as follows:

- (a) if served in hand, the document shall be deemed to be received when delivered:
 - 1. personally to the person; or
 - 2. personally to any officer, employee, or agent of the person authorized by appointment of the person or by law to accept service; or
 - 3. at the person's last known address in the Commonwealth; or
 - 4. at the last known address of any officer, employee, or agent of the person authorized by appointment of the person or by law to accept service; or
- (b) if given by certified mail, return receipt requested, the document shall be deemed to be received either:
 - 1. when signed for by:
 - a. the person; or
 - b. the person's officer, employee, or agent, including, without limitation, any officer, employee, or agent, authorized by appointment of the person or by law to accept service;
 - 2. when returned by the U.S. Postal Service to the Department as unclaimed, unless the Department is persuaded that the document was not claimed for reasons beyond the control of the person to whom the document was sent;
- (c) if given by regular mail, the document shall be deemed to be received no later than the third business day after it is mailed to the person, unless the Department is persuaded otherwise by the person to whom the document was mailed.

(4) Determining Date of Receipt of Document Submitted to the Department. Except as provided by 310 CMR 40.0008(5), each document required by, or submitted pursuant to, 310 CMR 40.0000 shall be deemed received by the Department as follows:

- (a) if served in hand, the document shall be deemed to be received on the date when delivered to the appropriate regional office of the Department (*i.e.* the date stamped received), unless the date stamped is rebutted by production of a receipt from the Department; provided, however, that if the date stamped reflects a date within seven days of the date the submittal is due, the submittal shall be deemed to have been received by the due date;
- (b) if given by regular mail, the document shall be deemed to be received when delivered to the appropriate office of the Department (*i.e.* the date stamped received); provided, however, that if the date stamped reflects a date within seven days of the date the submittal is due, the submittal shall be deemed to have been received by the due date;
- (c) if given by certified mail, return receipt requested, the document shall be deemed to be received when delivered to the appropriate office of the Department (*i.e.* the date stamped received), unless the date stamped is rebutted by production of the return receipt; provided, however, that if the date stamped reflects a date within seven days of the date the submittal is due, the submittal shall be deemed to have been received by the due date; or
- (d) if given by electronic transmission, where the Department provides for submitting the document by such means, the document shall be deemed received on the date the transmission is delivered to the Department, provided that the date of the transmission is within seven days of the date the submittal is due and that a printed copy of the document is submitted to the appropriate office of the Department within fourteen days of the date the submittal is due; if the printed copy of the document is not received by the appropriate office of the Department within 14 days of the date the submittal is due, then the document will be considered received on the date the printed copy is received. In no case shall the printed copy be submitted to the Department more than 14 days after the date the electronic transmission is delivered to the Department.

(5) Exceptions.

- (a) Adjudicatory Proceedings. Documents required or permitted to be filed under 310 CMR 1.00, Rules for Adjudicatory Proceedings, and 310 CMR 5.00, Administrative Penalty Regulations, shall be filed in accordance with the rules for timely filing set forth therein.
- (b) Tier I Permits.
 - 1. The computation of time periods for timely action under 310 CMR 4.04(2) shall be determined in accordance with 310 CMR 40.0720(3).

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2. A Tier I Permit Application shall be deemed received by the Department in accordance with 310 CMR 40.0008(4), provided a copy of the permit application fee remittance is attached to the application and the applicant certifies that the application fee has been mailed, or hand-delivered to the Department, concurrent with submittal of the application. If a copy of the permit application fee remittance is not attached to the application, or the certification of mailing or hand-delivery is not provided, the application shall be deemed received when the permit application fee is received (*i.e.* the date posted by the receiving bank).
- (c) Interim Deadlines and Notices of Noncompliance. For purposes of determining whether a person has complied with an Interim Deadline or come into compliance with a requirement by the date specified in a Notice of Noncompliance, each document required to be submitted shall be deemed received by the Department as follows:
 1. if served in hand, the document shall be deemed to be received on the date when delivered to the appropriate office of the Department (*i.e.* the date stamped received), unless the date stamped is rebutted by production of a receipt from the Department;
 2. if given by regular mail, the document shall be deemed to be received when delivered to the appropriate office of the Department (*i.e.* the date stamped received); or
 3. if given by certified mail, return receipt requested, the document shall be deemed to be received when delivered to the appropriate office of the Department (*i.e.* the date stamped received), unless the date stamped is rebutted by production of the return receipt.
- (d) Presumptive Approval of IRAs. Each written request for approval of an IRA shall be given to the Department by certified mail, return receipt requested, or served in hand. Each such submittal shall be deemed received by the Department as follows:
 1. if served in hand, the document shall be deemed to be received on the date when delivered to the appropriate office of the Department (*i.e.* the date stamped received), unless the date stamped is rebutted by production of a receipt from the Department;
 2. if given by certified mail, return receipt requested, the document shall be deemed to be received when delivered to the appropriate office of the Department (*i.e.* the date stamped received), unless the date stamped is rebutted by production of the return receipt; or
 3. if given by electronic transmission, the document shall be deemed received on the date the transmission is delivered to the Department, provided the printed copy of the document is delivered to the Department by hand or certified mail on or before the next business day.
- (e) Notification of Releases, Threats of Release and Imminent Hazards. Each notification required by 310 CMR 40.0300 shall be given to the Department (*i.e.* received) as follows:
 1. if given orally, the notification shall be deemed to be received on the date and at the time when communicated in person or by telephone;
 2. if given in writing and served in hand, the notification shall be deemed to be received on the date when delivered to the appropriate office of the Department (*i.e.* the date stamped received), unless the date stamped is rebutted by production of a receipt from the Department;
 3. if given in writing by regular mail, the notification shall be deemed to be received when delivered to the appropriate office of the Department (*i.e.* the date stamped received); or
 4. if given in writing by certified mail, return receipt requested, the document shall be deemed to be received when delivered to the appropriate office of the Department (*i.e.* the date stamped received), unless the date stamped is rebutted by production of the return receipt.

40.0009: Certification of Submittals

- (1) Any person undertaking a response action shall include the following written declaration when expressly required by 310 CMR 40.0000, including, but not limited to, with any Release Notification Form, Status Report, Completion Statement, Phase V Report, Response Action Outcome Statement, Tier I Permit Application, Tier Classification Submittal, LSP Evaluation Opinion, Tier II Extension Submittal, Tier II Transfer Submittal, Periodic Review Opinion, Final Inspection Report, Construction Plan and Specifications, Operation, Maintenance and/or Monitoring Plan, Bill of Lading, Downgradient Property Status Submittal, Modification of Downgradient Property Status Submittal, or other LSP Opinion submitted to the Department pursuant to the MCP:

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"I, _____, attest under the pains and penalties of perjury (i) that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this submittal, (ii) that, based on my inquiry of those individuals immediately responsible for obtaining the information, the material information contained in this submittal is, to the best of my knowledge and belief, true, accurate and complete, and (iii) that I am fully authorized to make this attestation on behalf of the person or entity legally responsible for this submittal. I/the person or entity on whose behalf this submittal is made am/is aware that there are significant penalties, including, but not limited to, possible fines and imprisonment, for willfully submitting false, inaccurate or incomplete information."

By: _____
Signature Date

Title

For: _____
Name of person or entity

(2) The written declaration in 310 CMR 40.0009(1) required of a person undertaking a response action shall be made by the highest ranking individual(s) having day-to-day responsibility for the performance of the response action which is the subject of the submittal. The written declaration shall not be made by the Licensed Site Professional engaged or employed by the RP, PRP or Other Person to render Professional Services with respect to the site, unless the Licensed Site Professional's client or employer has authorized him or her in writing to act as his or her agent for the purpose of making the written declaration.

(3) The written declaration required by 310 CMR 40.0009(1) shall include the signature of each person making the submittal, the date on which each such person makes his or her attestation and the position or office of each such person.

(4) Each submittal filed with the Department pursuant to 310 CMR 40.0000 shall be accompanied by a completed transmittal form established by the Department for such purposes.

(5) No person filing a submittal required by M.G.L. c. 21E or 310 CMR 40.0000 with the Department shall alter, modify or nullify the contents of the transmittal form established by the Department for such purposes without the express approval of the Department.

(6) The Department may require any person providing information required to be submitted to the Department pursuant to M.G.L. c. 21E, 310 CMR 40.0000, or any order issued or determination made by the Department pursuant to M.G.L. c. 21E and 310 CMR 40.0000, to include the written declaration set forth in 310 CMR 40.0009(1).

40.0010: Effect of Orders and Appeals

(1) The issuance of an order under M.G.L. c. 21E, §§ 9 or 10, or any appeal of an order issued under M.G.L. c. 21E, § 9, shall not prevent the Department from issuing any future order(s) or from taking any other action authorized by law, including, but not limited to, taking or arranging for one or more response actions at the disposal site which is the subject of the order on appeal.

(2) While an appeal from an order issued under M.G.L. c. 21E, § 9, is pending, the Department may provide, pursuant to M.G.L. c. 21E, § 10(b), for the order or any part thereof to become provisionally effective and enforceable immediately if the Department finds that an Imminent Hazard exists or could result pending avoidable delay in compliance.

40.0050: Appeals of Orders and Permits

- (1) Wherever expressly provided by 310 CMR 40.0000, any person who is aggrieved by a permit decision of the Department, or order issued pursuant to M.G.L. c. 21E, § 9, may request an adjudicatory hearing before the Department.
- (2) Each request for a hearing must be sent to the Docket Clerk of the Department by certified mail or hand-delivered within 21 days of the date of issuance of the decision being appealed. A copy of the request shall be sent by certified mail or hand delivered simultaneously to:
 - (a) the Chief Municipal Officer for the municipality where the disposal site is located;
 - (b) the regional office of the Department that issued the decision or order; and
 - (c) where the person aggrieved by a decision is a Permit Applicant who is appealing a permit decision, pursuant to 310 CMR 40.0770, such person shall also simultaneously send, by certified mail or hand delivery, a copy of the request for an adjudicatory hearing to each person who provided public comment.
- (3) Any person who appeals a decision or order who is neither the applicant nor the person to whom such an order was issued is required to simultaneously send a copy of the hearing request by certified mail or by hand to the applicant. For purposes of 310 CMR 40.0000, an aggrieved person is any person who is entitled to become a party or intervene in the proceeding under 310 CMR 1.00.
- (4) Each request for a hearing submitted pursuant to 310 CMR 40.0050 shall state clearly and concisely the facts which are grounds for the proceeding, in what manner the person, in whose name the request is made, is aggrieved and the remedy that is being sought. The appropriate filing fee required under 310 CMR 4.00 shall be sent to the Department in the manner required therein.
- (5) Where an applicant is seeking a decision from the Department, the applicant has the burden of establishing, on the basis of credible evidence from a competent source, such facts as are necessary to meet the conditions and criteria set forth in the applicable provisions of 310 CMR 40.0000.
- (6) Where an aggrieved person is someone other than the applicant, the aggrieved person has the burden of establishing on the basis of credible evidence from a competent source, such facts as are necessary to meet the conditions and criteria set forth in applicable provisions of 310 CMR 40.0000.
- (7) The filing of an appeal shall not prevent the Department from issuing any future orders or taking any other action the Department reasonably deems necessary to respond to a release or threat of release of oil or hazardous material, including, but not limited to, taking or arranging one or more response actions at the site or location which is the subject of the appeal.
- (8) The following determinations shall not be subject to an adjudicatory hearing:
 - (a) a decision whether to issue an order pursuant to M.G.L. c. 21E, § 10;
 - (b) a decision whether to issue a Notice of Responsibility to any person pursuant to 310 CMR 40.0160(1);
 - (c) a decision whether to issue a Notice of Intent to Take a Response Action pursuant to 310 CMR 40.0160(2);
 - (d) a decision whether to issue a Request for Information pursuant to 310 CMR 40.0165;
 - (e) a decision whether to establish Interim Deadlines pursuant to M.G.L. c. 21E, § 3A(j) and 310 CMR 40.0167;
 - (f) a decision whether to list a Location to be Investigated or disposal site pursuant to M.G.L. c. 21E, § 3A(b) and/or 310 CMR 40.0168;
 - (g) a decision to issue a Tier I Permit pursuant to 310 CMR 40.0700 in a category lower than that recommended in the permit application;
 - (h) a decision whether to authorize site access pursuant to M.G.L. c. 21E, § 8, and 310 CMR 40.0173;
 - (i) a decision whether to develop an administrative record in accordance with 310 CMR 40.1300;

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- (j) a decision whether to audit a specific site to determine whether such site is in compliance with M.G.L. c. 21E, 310 CMR 40.0000, and any other law administered or enforced by the Department;
- (k) a decision whether to initiate enforcement action against any person under M.G.L. c. 21E and/or 310 CMR 40.0000;
- (l) a decision regarding a petition for reimbursement of costs under 310 CMR 40.1260;
- (m) a decision whether to initiate Compliance Assistance under 310 CMR 40.1100;
- (n) a decision whether to issue a Technical Assistance Grant;
- (o) a decision upon administrative review of a demand for payment of Response Action Costs in accordance with 310 CMR 40.1220(3);
- (p) any decision to suspend, revoke or refuse to renew any permit, authorization, approval, including, but not limited to, any Waiver of Approvals, or similar form of permission required by M.G.L. c. 21E and/or the MCP, where:
 - 1. DEP is expressly not required by the General Laws to grant a hearing; or
 - 2. DEP is required by law to take such action without exercising any discretion in the matter on the basis of a court conviction or judgment; or
 - 3. such action is based solely upon failure to file timely reports, schedules or applications, or to pay lawfully prescribed fees;
- (q) any decision contained in a Notice of Audit Findings at the conclusion of an audit, provided, however, that any Notice of Intent to Assess a Civil Administrative Penalty or order accompanying such notice or issued following issuance of a Notice of Audit Finding shall be subject to an adjudicatory hearing;
- (r) any decision to designate one or more disposal sites or response actions as a Special Project in accordance with 310 CMR 40.0026;
- (s) any Reclassification of a Tier IA disposal site made in accordance with 310 CMR 40.0583;
- (t) any decision to exempt a Location To Be Investigated, Unclassified Disposal Site, or Non-Priority Site Without a Waiver from the transition provisions of 310 CMR 40.0600 in accordance with 310 CMR 40.0637; and
- (u) any other determination, decision, authorization or approval under M.G.L. c. 21E and/or 310 CMR 40.0000 for which an adjudicatory hearing is not required by M.G.L. c. 30A, unless expressly required by 310 CMR 40.0000

40.0051: Appeals Relative to Administrative Penalties

Whenever the Department seeks to assess a civil administrative penalty pursuant to M.G.L. c. 21A, § 16, M.G.L. c. 21E and 310 CMR 40.0000, the person who would be assessed the penalty shall have the right to an adjudicatory hearing. Any request for an adjudicatory hearing thereon shall be made in accordance with M.G.L. c. 21A, § 16, and 310 CMR 5.00.

40.0060: Special Project Designation

310 CMR 40.0061 through 40.0068, cited collectively as 310 CMR 40.0060, set forth the requirements and procedures for Special Project designations.

40.0061: Purpose and Eligibility

- (1) The Department may designate certain projects as "Special Projects." Special Project designation shall authorize the Department to:
 - (a) extend the deadline for submitting a Tier Classification Submittal required by 310 CMR 40.0500 and 40.0600; and
 - (b) establish an alternative annual compliance assurance fee schedule for the Special Project as described in 310 CMR 4.00.
- (2) Eligible Applicants. Any public body politic, including but not limited to any federal, state or municipal governmental entity, may apply to the Department for designation of a project as a Special Project.

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(e) a disposal site where a Waiver Completion Statement has been submitted to the Department in compliance with the provisions of 310 CMR 40.537 and/or 310 CMR 40.0630.

(18) threats of release indicated by the outcome of tank tests specified in 310 CMR 40.0314, where a tank test outcome has resulted from a testing error, as documented within the allowable time period for notification by an additional test conducted on identical and unrepaired underground storage tank system elements;

(19) releases of oil and/or hazardous material to:

- (a) an underground utility vault if such releases are completely contained within the vault; or
- (b) the interior of a building, provided such releases are completely contained within the building;

(20) releases of chloroform in groundwater attributable to naturally-occurring ecological processes and/or leakage or discharges from a public water supply system; and

(21) releases of oil or waste oil of less than a Reportable Quantity that result in a sheen on a surface water, provided that:

- (a) federal officials receive notice of such release pursuant to the Federal Water Pollution Control Act as amended;
- (b) a response occurs as directed by those federal officials and according to other federal, state or local requirements applicable to such a release and response;
- (c) the sheen does not persist for more than 24 consecutive hours; and
- (d) the sheen does not recur at the same location within any 30 day period.

40.0318: Limited Removal Actions

(1) Limited Removal Actions may be undertaken by RPs, PRPs or Other Persons prior to notification to the Department of those "120 Day Notification" releases described in 310 CMR 40.0315.

(2) Limited Removal Actions shall not be initiated or continued:

- (a) after obtaining knowledge that a release or threat of release requires notification under the "2 Hour" or "72 Hour" notification provisions of 310 CMR 40.0311 through 40.0314, whether or not notification has been made to the Department;
- (b) following notification to the Department by any person listed at 310 CMR 40.0331 of any release or threat of release of oil and/or hazardous material at the disposal site which requires notification under 310 CMR 40.0315; or
- (c) at any Location to Be Investigated or disposal site subject to the provisions of 310 CMR 40.0600.

(3) RPs, PRPs or Other Persons who undertake Limited Removal Actions shall conform to the Response Action Performance Standard specified in 310 CMR 40.0191.

(4) Limited Removal Actions shall be restricted to the excavation and off-site recycling, reuse, treatment, and/or disposal of not more than the following cumulative volumes of soil removed from a disposal site with measured concentrations of oil or hazardous material equal to or greater than an applicable Reportable Concentration:

- (a) not more than 100 cubic yards of soil contaminated solely by a release of oil or waste oil; and
- (b) not more than 20 cubic yards of soil contaminated by a release of hazardous material or a mixture of oil or waste oil and hazardous material.

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- (5) All excavation activities conducted by an RP, PRP or Other Person as a Limited Removal Action shall occur within 120 days of obtaining knowledge of a release described in 310 CMR 40.0315.
- (6) All contaminated soil generated as a result of a Limited Removal Action shall be stockpiled, stored, characterized, transported, and recycled, reused, treated, or disposed of as set forth in 310 CMR 40.0030.
- (7) Records documenting:
 - (a) the concentrations of oil and/or hazardous material in soil at the disposal site following a Limited Removal Action; and
 - (b) the chemical characterization and volume of soil removed from a disposal site as part of a Limited Removal Action, shall be maintained by the RP, PRP or Other Person undertaking the Limited Removal Action for a minimum of five years or for so long as is required under 310 CMR 40.0014, whichever is longer.
- (8) Limited Removal Actions conducted in compliance with the provisions of 310 CMR 40.0318 shall not require oversight by a Licensed Site Professional, except for Limited Removal Actions that involve the use of the Bill of Lading soil management process described in 310 CMR 40.0030.
- (9) In those cases where volumes of contaminated soil encountered unexpectedly exceed initial estimates and the volumetric excavation limits specified in 310 CMR 40.0318(4), persons required to notify under 310 CMR 30.0331 shall notify the Department of the release at the disposal site within the allowable time period for notification, and the person conducting the Limited Removal Action shall either:
 - (a) cease remedial actions; or
 - (b) continue removal actions at the disposal site as a Release Abatement Measure, as specified in 310 CMR 40.0443.

40.0320: Releases and Threats of Release that Pose Imminent Hazards

40.0321: Reporting of Releases and Threats of Release that Pose or Could Pose an Imminent Hazard

- (1) For the purpose of fulfilling the "Two Hour" release notification obligations of 310 CMR 40.0311(7), the following releases shall be deemed to pose an Imminent Hazard to health, safety, public welfare and/or the environment:
 - (a) a release to the environment which results in the presence of oil and/or hazardous material vapors within buildings, structures, or underground utility conduits at a concentration equal to or greater than 10% of the Lower Explosive Limit;
 - (b) a release to the environment of reactive or explosive hazardous material, as described in 310 CMR 40.0347, which threatens human health or safety;
 - (c) a release to a roadway that endangers public safety;
 - (d) a release to the environment of oil and/or hazardous material which poses a significant risk to human health when present for even a short period of time, as specified in 310 CMR 40.0950;
 - (e) a release to the environment of oil and/or hazardous material which produces immediate or acute adverse impacts to freshwater or saltwater fish populations; or
 - (f) a release to the environment which produces readily apparent effects to human health, including respiratory distress or dermal irritation.
- (2) For the purpose of fulfilling the "Two Hour" release notification obligations of 310 CMR 40.0311(7), the following releases could pose an Imminent Hazard to human health:
 - (a) a release to the environment indicated by the measurement of oil and/or hazardous material in a private drinking water supply well at a concentration equal to or greater than ten times the Category RCGW-1 Reportable Concentration, as described in 310 CMR 40.0360 through 40.0369 and listed at 310 CMR 40.1600; or
 - (b) a release to the environment indicated by the measurement of concentrations of hazardous material, equal to or greater than any of the following concentrations of hazardous

40.0404: Timing of Response Actions

- (1) RPs and any other persons conducting response actions shall initiate, implement, and complete those response actions described in 310 CMR 40.0400 within the time frames specified in 310 CMR 40.0400 and/or any Interim Deadlines specified by the Department pursuant to 310 CMR 40.0167.
- (2) RPs and any other persons conducting response actions shall submit all required plans, status reports, completion reports, and other required response action documentation described in 310 CMR 40.0400 within the time frames specified in 310 CMR 40.0400 and/or any Interim Deadline specified by the Department pursuant to 310 CMR 40.0167.
- (3) Except for notifications retracted pursuant to the provisions of 310 CMR 40.0335 and disposal sites, Locations To Be Investigated subject to the Transition Provisions of 310 CMR 40.0600, and disposal sites meeting the criteria in 310 CMR 40.0501(8), a Response Action Outcome Statement or Tier Classification Submittal shall be received by the Department within one year of the earliest following dates:
 - (a) the date that oral notification is received by the Department from any person listed at 310 CMR 40.0331 of a release or threat of release that requires notification pursuant to the "2 Hour" or "72 Hour" notification provisions of 310 CMR 40.0311 through 310 CMR 40.0314;
 - (b) the date that written notification is received by the Department from any person listed at 310 CMR 40.0331 of a release that requires notification pursuant to the "120 Day" notification provisions of 310 CMR 40.0315;
 - (c) the date that any person listed at 310 CMR 40.0331 obtains oral approval from the Department to conduct a Release Abatement Measure at a disposal site as a continuation of a Limited Removal Action, as specified in 310 CMR 40.0443(4); or
 - (d) the date that the Department issues a Notice of Responsibility to any person listed at 310 CMR 40.0331 specifying that they are an RP or PRP for a release or threat of release that requires a response action pursuant to 310 CMR 40.0400.
- (4) Remedial actions shall not be undertaken or continued at any site by any person until that person provides notification to the Department of their knowledge of any releases or threats of release that meet one or more sets of notification criteria specified in 310 CMR 40.0300, except for:
 - (a) Limited Removal Actions undertaken in compliance with the provisions of 310 CMR 40.0318;
 - (b) time-critical Immediate Response Actions undertaken to address a release or threat of release of oil and/or hazardous material pursuant to the provisions of 310 CMR 40.0332 and 310 CMR 40.0421;
 - (c) the limited excavation of contaminated soil associated with the closure of an Underground Storage Tank system, as specified at 310 CMR 40.0421(3); or
 - (d) time-critical Utility-related Abatement Measures undertaken to prevent or abate an immediate and substantial danger to public safety, as specified in 310 CMR 40.0462(3).
- (5) Releases and/or threats of release that occur at a disposal site after Tier Classification of that disposal site shall not be subject to the one year time frames specified in 310 CMR 40.0404(3), provided that response actions are being conducted at the disposal site in compliance with the provisions of 310 CMR 40.0000, including, where appropriate, the submission of all necessary Immediate Response Action Plans, Status Reports, and Completion Statements.

40.0405: Overview of Preliminary Response Actions

- (1) Initial Site Investigation Activities.
 - (a) Initial Site Investigation Activities shall consist of limited investigative and assessment actions of sufficient scope and level of effort to make and/or guide determinations on required and appropriate response actions at a site. Initial Site Investigation Activities may include, without limitation:
 1. evaluation of records relating to the release, threat of release or impacted site;
 2. evaluation of underground storage tank testing results;

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3. testing and/or retesting of underground storage tanks;
 4. evaluation of environmental monitoring data;
 5. limited sampling and analysis of soil, sediment, groundwater, surface water, soil gas, indoor air or ambient air; and
 6. any other limited investigations, monitoring, surveys, testing or information gathering activities necessary to evaluate releases and threats of release of oil and/or hazardous material, excluding removal and containment actions.
- (b) The objective of Initial Site Investigation Activities is to obtain preliminary information and data on a release, a threat of release and/or site in order to:
1. determine the existence, source, nature and approximate extent of the release or threat of release;
 2. determine if the release or threat of release poses or could pose an Imminent Hazard, as described in 310 CMR 40.0321;
 3. determine if an Immediate Response Action is necessary, as described in 310 CMR 40.0412;
 4. determine if a Limited Removal Action is appropriate at the site, as described in 310 CMR 40.0318;
 5. determine if a Release Abatement Measure is appropriate at the site, as described in 310 CMR 40.0440;
 6. identify persons who are responsible or potentially responsible for the release or threat of release;
 7. obtain, assemble and record information and data needed to evaluate the release or threat of release; and
 8. determine if a demonstration can readily be made that a condition of No Significant Risk exists or has been achieved at the site, before or after the completion of a Limited Removal Action, Immediate Response Action, or Release Abatement Measure.
- (c) The results of Initial Site Investigation Activities shall:
1. be used to support a Response Action Outcome Statement at the conclusion of Preliminary Response Actions; or
 2. be used as the basis for a Phase I Report, as described in 310 CMR 40.0480, whenever a Response Action Outcome is not filed for a site within one year of the initial notification to the Department of a release or threat of release at the site by any person listed at 310 CMR 40.0331.
- (d) When used to support a Response Action Outcome Statement, the results of Initial Site Investigation Activities shall be reported in a response action report or in a Phase I Report, pursuant to 310 CMR 40.0481, and shall contain all information, data, records and documents necessary for that purpose.
- (e) Assessment activities conducted at a site prior to Tier Classification, as described in 310 CMR 40.0500, shall not require approval from the Department.

(2) Immediate Response Actions

- (a) Immediate Response Actions are assessment and/or remedial actions that shall be undertaken in an expeditious manner to address sudden releases, Imminent Hazards and other time-critical release or site conditions. Immediate Response Actions shall be taken whenever and wherever timely actions are required to assess, eliminate, abate or mitigate adverse or unacceptable release, threat of release and/or site conditions, as set forth in 310 CMR 40.0412.
- (b) Except as provided in 310 CMR 40.0420(12), remedial actions conducted as part of an Immediate Response Action require prior approval from the Department.

(3) Release Abatement Measures. Release Abatement Measures are remedial actions that may be voluntarily undertaken by persons conducting response actions at disposal sites. The purposes of Release Abatement Measures are to remediate limited or localized releases, and/or to mitigate the impacts of larger releases until such time as more comprehensive remedial actions can be instituted at the disposal site, in accordance with 310 CMR 40.0800.

40.0414: continued

(5) Immediate Response Actions shall be presumed to require the prevention of impact(s) to public water supplies at sites where such impact is likely to occur within the time period that is likely to be required for the implementation and/or completion of Comprehensive Response Actions. This presumption may be rebutted, however, by the RP, PRP or Other Person conducting response actions, based upon a showing by a preponderance of the evidence that:

- (a) it is unlikely that the site will present impact(s) to the public water supply, for the time period that is likely to be required for the implementation and/or completion of Comprehensive Response Actions;
- (b) it is not feasible to prevent the impact(s) to the public water supply; and
- (c) in cases where prevention is not feasible, it is not feasible to mitigate the impact(s) to the public water supply.

(6) Immediate Response Actions may include:

- (a) preparation of technical reports or memoranda documenting why accelerated removal or containment actions are or are not required;
- (b) an assessment of whether an Imminent Hazard to health, safety, public welfare or the environment exists at the site;
- (c) collection and assessment of soil, sediment, surface water, groundwater, soil gas, or atmospheric or indoor air samples;
- (d) assessment of the validity of underground storage tank testing results;
- (e) assessment of the need to take timely actions to prevent releases from occurring at a site where a threat of release has been identified;
- (f) installation of fences, warning signs, including, where appropriate, multilingual and symbolic signs, and/or the institution of other security or site control measures;
- (g) installation of drainage controls;
- (h) construction or stabilization of berms, dikes or impoundments;
- (i) temporary covering or capping of contaminated soils or sludges;
- (j) installation of waste or product recovery and groundwater treatment systems or soil vapor extraction systems;
- (k) removal of contaminated soils;
- (l) removal of the contents of, or removal of, drums, barrels, tanks or other bulk containers which contain or may contain oil and/or hazardous material;
- (m) temporary evacuation or relocation of residents from the site and/or surrounding area;
- (n) provision of temporary alternative water supplies;
- (o) installation of a sub-slab soil gas depressurization system beneath an occupied structure;
- or
- (p) any other assessment, containment or removal action consistent with the purpose and scope of an Immediate Response Action or otherwise deemed necessary by the Department.

(7) A cap or engineered barrier that is constructed in accordance with the performance standards contained in 310 CMR 40.0996(4) as an Immediate Response Action will not be considered part of a Permanent Solution at a disposal site, unless and until a Phase III is performed pursuant to the provisions of 310 CMR 40.0850 demonstrating the lack of a feasible alternative.

40.0420: Requirements, Approvals, and Time Lines For Conducting Immediate Response Actions

(1) Immediate Response Actions shall be taken by RPs, and may be taken by PRPs or Other Persons, in response to all releases and threats of release described in 310 CMR 40.0412.

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- (2) Immediate Response Actions shall be conducted in compliance with all applicable provisions and time lines specified in 310 CMR 40.0400, and in compliance with any response action requirements deemed necessary by the Department and/or specified by the Department in its approval of Immediate Response Action Plans.
- (3) RPs, PRPs and Other Persons shall communicate to the Department their intentions to conduct Immediate Response Actions which are required pursuant to 310 CMR 40.0412. Such communication shall be provided orally to the Department on the earliest of the following dates:
 - (a) at the time an RP, PRP, or Other Person is providing oral notification to the Department of a "2 Hour" or "72 Hour" release or threat of release described in 310 CMR 40.0311 through 40.0314;
 - (b) at the time a person is orally informed by the Department that they are an RP or PRP for a site at which an Immediate Response Action is required pursuant to 310 CMR 40.0412;
 - (c) within 72 hours of the time an RP, PRP, or Other Person obtains knowledge of one or more of the conditions of Substantial Release Migration specified in 310 CMR 40.0413;
 - (d) within 72 hours of the time a person receives a Notice of Responsibility from the Department indicating that they are an RP or PRP for a site at which an Immediate Response Action is required pursuant to 310 CMR 40.0412; or
 - (e) within an Interim Deadline specified by the Department pursuant to 310 CMR 40.0167.
- (4) When orally communicating to the Department their intentions to conduct an Immediate Response Action, RPs, PRPs or Other Persons shall inform the Department:
 - (a) whether or not the RP, PRP or Other Person intends to conduct an Immediate Response Action in the time period and manner warranted by the release, threat of release and/or site conditions, in compliance with all applicable provisions of 310 CMR 40.0400, and in compliance with any specific response action requirements which have been communicated to them by the Department;
 - (b) whether the Immediate Response Action will involve the implementation of remedial actions; and
 - (c) if remedial actions are proposed, details on the nature and extent of such actions.
- (5) Upon review and consideration of the oral communication provided by the RP, PRP or Other Person, DEP shall orally approve, deny, or conditionally approve:
 - (a) the details of remedial actions proposed at the time of such communication, in cases where the Immediate Response Action will involve removal or containment actions; or
 - (b) a recommendation that remedial actions are not required at the time of such communication, in cases where the Immediate Response Action will involve assessment actions only.
- (6) Except as provided in 310 CMR 40.0421, approval from the Department shall be required prior to the implementation of an Immediate Response Action, or significant modification of a previously approved Immediate Response Action that involves remedial actions. Such approval may be granted orally by the Department in situations where there has been a sudden release of oil and/or hazardous material, where there exists a threat of release of oil and/or hazardous material, and in other cases where written approval would delay the timely implementation of an Immediate Response Action. Where time permits, and in situations where the Department declines to provide oral approval, RPs, PRPs, and Other Persons shall seek approval to conduct Immediate Response Actions by submittal to the Department of an Immediate Response Action Plan pursuant to the provisions of 310 CMR 40.0420(7) and 40.0424.
- (7) Except as provided at 310 CMR 40.0420(8), and without regard to whether oral approval was given by the Department to conduct or initiate Immediate Response Actions, RPs and other persons conducting response actions shall submit to the Department an Immediate Response Action Plan, within the earliest of the following time periods:

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- (a) within 60 days of providing oral notification to the Department of those "2 Hour" or "72 Hour" releases or threats of release specified in 310 CMR 40.0311 through 40.0314;
 - (b) within 60 days of orally communicating to the Department knowledge of a condition of Substantial Release Migration at a disposal site;
 - (c) within 60 days of the date that the Department issues a Notice of Responsibility indicating that they are an RP or PRP for a site at which an Immediate Response Action is required pursuant to 310 CMR 40.0412; or
 - (d) within a time period established by the Department as an Interim Deadline in accordance with 310 CMR 40.0167.
- (8) Submission to the Department of an Immediate Response Action Plan is not required if an Immediate Response Action Completion Report, as described in 310 CMR 40.0427, or a Response Action Outcome Statement, as described in 310 CMR 40.1000, is received by the Department by the due date of the Immediate Response Action Plan.
- (9) All written Immediate Response Action Plans submitted to the Department shall be approved, conditionally approved, or denied by the Department in writing within 21 days of receipt. Approval of such plan shall be presumed if the Department does not issue a written approval or denial of said plan within 21 days of receipt. Immediate Response Actions that had previously been orally approved by the Department shall continue during this review period.
- (10) In approving an Immediate Response Action Plan, the Department may specify conditions of approval, including, but not limited to:
- (a) the role of the Department in overseeing or conducting various elements of the Immediate Response Action;
 - (b) Interim Deadlines for one or more elements of the Immediate Response Action; or
 - (c) submittal requirements for one or more elements of the Immediate Response Action.
- (11) RPs, PRPs and Other Persons conducting Immediate Response Actions shall do so in conformance with all conditions and deadlines of any oral or written approval granted by the Department pursuant to 310 CMR 40.0420.
- (12) Approval from the Department shall not be required to conduct or initiate Immediate Response Actions that consist solely of the construction of a fence and/or the posting of signs, provided the Department is informed of such actions in the next required response action submittal.
- (13) Presumptive approval of an Immediate Response Action Plan pursuant to 310 CMR 40.0420(9) means the RP, PRP or Other Person has approval to proceed with Immediate Response Actions in compliance with all applicable provisions of 310 CMR 40.0000. Such presumptive approval shall not be construed as approval by the Department of the scope or adequacy of plans or of the response actions as actually conducted, or as forgiveness of non-compliance with any provision of 310 CMR 40.0000.

40.0421: Immediate Response Actions That Do Not Require Prior Approval From the Department

- (1) Except where specifically prohibited in writing by the Department, assessment activities may be conducted at any site without prior notice to or approval from the Department to conduct such activities.
- (2) Prior notice to and approval from the Department shall not be required to conduct or initiate remedial actions in those cases where the delay involved in notifying and obtaining approval from the Department would substantially exacerbate release or site conditions or endanger health, safety, public welfare or the environment. Immediate Response Actions conducted or initiated under such circumstances may include, without limitation, containment and/or removal actions that are undertaken:
 - (a) immediately after a sudden release of oil and/or hazardous material;
 - (b) immediately after the discovery of a release to prevent, abate or eliminate an Imminent Hazard; or
 - (c) immediately after the discovery of a threat of release, in order to prevent a release from occurring.

40.0421: continued

Persons conducting or initiating remedial actions under the provisions of 310 CMR 40.0421(2) shall notify the Department of those remedial actions undertaken and needed to be taken at the site as soon as possible, and not later than 24 hours after commencement thereof.

(3) Prior notice to and approval from the Department shall not be required to excavate and stockpile up to 100 cubic yards (cumulative for the disposal site of concern) of soils contaminated by a release of oil or waste oil at concentrations or quantities that meet one or more of the sets of criteria specified in 310 CMR 40.0313, and resulting from the closure of an Underground Storage Tank, provided:

- (a) site conditions do not pose an Imminent Hazard to human health, safety, public welfare, or the environment;
- (b) contaminated soils are managed in conformance with the provisions of 310 CMR 40.0030;
- (c) notification is provided to the Department within the time frames required by 310 CMR 40.0332, specifying the nature and extent of soil removal activities; and
- (e) appropriate Immediate Response Actions are initiated subsequent to notification, in conformance with all provisions of 310 CMR 40.0420.

40.0424: Immediate Response Action Plans

- (1) An Immediate Response Action Plan shall contain the following:
 - (a) the name, address, telephone number and relationship to the site of the person assuming responsibility for conducting the Immediate Response Action;
 - (b) a description of the release or threat of release, site conditions and surrounding receptors;

40.0441: continued

- (3) An RP, PRP or Other Person may propose to the Department to conduct a Release Abatement Measure at a disposal site at any time following notification to the Department of a release or threat of release pursuant to 310 CMR 40.0300.
- (4) Any person who conducts a Release Abatement Measure shall do so in accordance with all applicable requirements and specifications prescribed in 310 CMR 40.0000. RPs, PRPs, and Other Persons conducting Release Abatement Measures shall employ or engage a Licensed Site Professional as required by these regulations.
- (5) Release Abatement Measures shall comply with all local, state and federal permitting and approval requirements.
- (6) Health and safety procedures consistent with the provisions of 310 CMR 40.0018 shall be implemented at all sites where a Release Abatement Measure is being conducted.

40.0442: Scope and Types of Release Abatement Measures

- (1) The scope and complexity of Release Abatement Measures shall be commensurate with the amount of information known about, and the degree of risk associated with, release and disposal site conditions. A Release Abatement Measure shall not:
 - (a) be implemented without a level of understanding of disposal site conditions and surrounding receptors sufficient to support the actions taken;
 - (b) be continued at a disposal site where encountered oil and/or hazardous material, migration pathways, or exposure routes are substantially different from those anticipated;
 - (c) be conducted in a manner that is likely to result in the exposure of surrounding human or ecological receptors to levels of oil and/or hazardous material that could pose a significant risk of harm to health, safety, public welfare or the environment, as described in 310 CMR 40.0950;
 - (d) prevent or impede the implementation of likely future response actions; or
 - (e) be conducted in a manner inconsistent with the Response Action Performance Standard described in 310 CMR 40.0191.
- (2) Release Abatement Measures conducted in accordance with the provisions of 310 CMR 40.0442(1) may include, without limitation:
 - (a) the excavation and off-site disposal of up to 500 cubic yards (cumulative, for the disposal site in question) of soil contaminated by oil and/or hazardous material at concentrations equal to or greater than applicable Reportable Concentrations, in conformance with 310 CMR 40.0030;
 - (b) the excavation and on or off-site treatment, recycling or reuse of up to 1500 cubic yards (cumulative, for the disposal site in question) of soil contaminated by oil and/or hazardous material at concentrations equal to or greater than applicable Reportable Concentrations, in conformance with 310 CMR 40.0030;
 - (c) the initiation of passive or active NAPL recovery systems that discharge to a closed container, or groundwater recovery or treatment systems that discharge Remedial Wastewater and/or Remedial Additives in accordance with 310 CMR 40.0040 to a sewer system, POTW, Non-Publicly Owned Treatment Works, surface water body, or to the ground surface or subsurface and/or groundwater; or
 - (d) the implementation of a soil vapor extraction system and/or groundwater sparging system, with appropriate off-gas treatment and controls, as described in 310 CMR 40.0049.

40.0442: continued

(3) A cap or engineered barrier, as defined in 310 CMR 40.0996(4), that is constructed as a Release Abatement Measure will not be considered part of a Permanent Solution at a disposal site, unless and until a Phase III performed pursuant to the provisions of 310 CMR 40.0850 demonstrates the lack of a feasible alternative.

(4) Release Abatement Measures shall not involve the excavation of greater than 1500 cubic yards (cumulative, for the disposal site in question) of soil contaminated by oil and/or hazardous material at concentrations equal to or greater than applicable Reportable Concentrations, unless a statement is provided in the Release Abatement Measure Plan by the RP, PRP, or Other Person conducting response actions certifying that, based upon information and opinions provided by an LSP, such persons have sufficient financial resources to manage excavated materials in the manner and time frames specified at 310 CMR 40.0030.

40.0443: Approvals Required to Conduct Release Abatement Measures

(1) A Release Abatement Measure shall not be conducted at any disposal site until a complete Release Abatement Measure Plan, as described in 310 CMR 40.0444, has been received by the Department. A Release Abatement Measure Plan shall not be considered complete until all information described in 310 CMR 40.0444 is received in the appropriate DEP regional office, accompanied by a photocopy of the check mailed to the appropriate address, in cases where a fee is specified pursuant to 310 CMR 4.00.

(2) Subsequent to the receipt by the Department of a complete RAM Plan, unless otherwise specified by the Department in writing, approval shall not be required from the Department to conduct the Release Abatement Measure. Exemption from the need to obtain approval from the Department in these cases shall not relieve RPs, PRPs, or Other Persons of their obligation to submit to the Department all required Release Abatement Measure Plans, Status Reports and Completion Reports.

(3) Any person implementing a Release Abatement Measure shall conform to all proposals and specifications contained in the Release Abatement Measure Plan, and any conditions specified by the Department.

(4) A modified Release Abatement Measure Plan shall be submitted to the Department prior to implementing a modification of a Release Abatement Measure if:

- (a) contaminants or conditions are discovered that significantly increase the degree or change the type of exposure to nearby receptors; or
- (b) a significant change is proposed to on-site treatment processes.

All other modifications may be implemented immediately and shall be documented with the next required response action submittal pursuant to 310 CMR 40.0440.

(5) Remedial actions specified in a Release Abatement Measure Plan shall be initiated by the RP, PRP, or Other Person conducting response actions at a disposal site within one year from the date of the Department's receipt of a complete Release Abatement Measure Plan. Release Abatement Measure Plans not initiated in this manner shall be considered invalid and unapproved.

40.0444: Release Abatement Measure Plans

(1) A Release Abatement Measure Plan shall not be considered complete unless it contains, at a minimum, the following:

- (a) the name, address, telephone number and relationship to the site of the person assuming responsibility for conducting the Release Abatement Measure;
- (b) a description of the release or threat of release, site conditions and surrounding receptors;
- (c) the objective(s), specific plan(s) and proposed implementation schedule for the Release Abatement Measure, including, as appropriate, plans and/or sketches of the site and any proposed investigative and/or remedial installations;

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- (d) a statement as to whether Remediation Waste, Remedial Wastewater and/or Remedial Additives will be excavated, collected, stored, treated, discharged, applied, reused, or otherwise managed at the site;
- (e) where appropriate, a proposed environmental monitoring plan, for implementation during and/or after the Release Abatement Measure;
- (f) a listing of federal, state and/or local permits likely to be needed to conduct the Release Abatement Measure;
- (g) the seal and signature of the Licensed Site Professional who prepared the Release Abatement Measure Plan;
- (h) the certification required at 310 CMR 40.0442(4), if greater than 1500 cubic yards of Remediation Wastes are to be excavated and managed at the disposal site; and
- (i) any other information that the Department, during its review and evaluation of the Release Abatement Measure Plan, determines to be necessary to complete said plan, in view of site specific circumstances and conditions.

(2) All Release Abatement Measure Plans submitted to the Department prior to Tier Classification of the disposal site shall be accompanied by the appropriate fee established in 310 CMR 4.00. No fee is required for Release Abatement Measure Plans submitted to the Department:

- (a) after Tier Classification of the disposal site;
- (b) for a priority disposal site conducting response actions in compliance with the provisions of 310 CMR 40.0640; or
- (c) for a disposal site with an approved Waiver.

(3) Release Abatement Measure Plans shall be submitted to the Department using a transmittal form established by the Department for such purposes.

40.0445: Status Reports on Release Abatement Measures

- (1) Persons conducting Release Abatement Measures shall submit a Status Report to the Department 120 days following oral, written or presumed approval of the Release Abatement Measure, whichever occurred sooner, or, in cases where approval is not required, 120 days following receipt by the Department of a complete Release Abatement Measure Plan, and every six months thereafter, until a Release Abatement Measure Completion Report, in accordance with the provisions of 310 CMR 40.0446, has been submitted to the Department.
- (2) Release Abatement Measure Status Reports shall contain, at a minimum, the following information:
 - (a) the status of response operations;
 - (b) any significant new site information or data;
 - (c) details of and/or plans for the management of Remediation Waste, Remedial Wastewater and/or Remedial Additives;
 - (d) monitoring data from the operation of remedial systems, including treatment works discharging Remedial Wastewater where applicable;
 - (e) any other information that the Department during its review and evaluation of a Status Report determines to be necessary to complete said Status Report, in view of site specific circumstances and conditions; and
 - (f) an LSP Opinion as to whether the Release Abatement Measure is being conducted in conformance with the Release Abatement Measure Plan and any conditions of approval established by the Department.
- (3) Status Reports shall not be required for sites where a Release Abatement Measure Completion Report or a Response Action Outcome Statement is received by the Department prior to the date on which the first Status Report is required pursuant to 310 CMR 40.0445(1).
- (4) Release Abatement Measure Status Reports shall be submitted to the Department using a transmittal form established by the Department for such purposes.

40.0446: Release Abatement Measure Completion Report

- (1) A Release Abatement Measure Completion Report shall be submitted to the Department no later than 60 days following the completion of those remedial actions proposed in the Release Abatement Measure Plan and/or approved by the Department pursuant to 310 CMR 40.0443.
- (2) A Release Abatement Measure shall be considered complete when the objectives of the Release Abatement Measure Plan have been met, and when all active and ongoing remedial actions related to the Release Abatement Measure have been terminated.
- (3) A Release Abatement Measure Completion Report shall not be required for sites where a Response Action Outcome Statement, as described in 310 CMR 40.1000, is submitted to the Department within 120 days of obtaining oral, written, or presumed approval from the Department to conduct the Release Abatement Measure, whichever occurred sooner.
- (4) A Release Abatement Measure Completion Report shall contain, at a minimum, the following:
 - (a) a description of the release or threat of release, site conditions, and surrounding receptors;
 - (b) a description of the Release Abatement Measure completed at the disposal site, including work undertaken in response to any conditions of approval imposed by the Department;
 - (c) all investigatory and monitoring data obtained during the implementation of the Release Abatement Measure;
 - (d) a succinct statement of findings and conclusions resulting from implementation of the Release Abatement Measure, including a statement as to whether the objectives of the Release Abatement Measure have been met;
 - (e) details and documentation on the management of any Remediation Waste, Remedial Wastewater and/or Remedial Additives managed at the site as part of the Release Abatement Measure; and

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(g) Evaluation for Immediate Response Actions. The Phase I Report shall include an evaluation of the need to conduct an Immediate Response Action, as described in 310 CMR 40.0412.

(h) Conclusions. The Phase I Report shall include a Conclusions section containing a summary of findings and statement of conclusions with respect to the site, and shall indicate the outcome of Initial Site Investigation Activities, as documented in the Phase I Report, and as described in 310 CMR 40.0486.

(2) In addition to the Phase I Report requirements set forth in 310 CMR 40.0483(1), such additional information as may be necessary to adequately and completely characterize a disposal site in accordance with the Response Action Performance Standard described in 310 CMR 40.0191, and/or as required by unique release, threat of release and/or site conditions, shall be provided in the Phase I Report. It may also be appropriate to eliminate certain information categories, or investigation or assessment elements from the Phase I Report, as may be consistent with unique release, threat of release and/or site conditions, by application of the Technical Justification standard set forth in 310 CMR 40.0193.

40.0484: Phase I Report Completion Statement

(1) All Phase I Reports submitted to the Department in support of a Response Action Outcome Statement, or as part of Tier Classification of a disposal site pursuant to 310 CMR 40.0500, shall be appended to the appropriate transmittal form established by the Department for such purposes.

(2) The Completion Statement form submitted with a Phase I Report shall include the following:

- (a) an LSP Opinion as to whether the Phase I Report conforms with applicable requirements specified in 310 CMR 40.0480;
- (b) the outcome of the Phase I Report, as described in 310 CMR 40.0486; and
- (c) the certification of the submittal required by 310 CMR 40.0009.

40.0485: Public Involvement

Public Involvement Activities shall be conducted in accordance with 310 CMR 40.1400 through 40.1406. Public Involvement Activities relevant to Initial Site Investigation Activities specifically include those activities set forth in 310 CMR 40.1403(3)(e), and may include, but are not limited to, those activities set forth in 310 CMR 40.1403(3)(a) and 40.1403(4)(f).

40.0486: Possible Outcomes of a Phase I Report

The following outcomes are possible upon completion of a Phase I Report:

(1) Comprehensive Response Actions are necessary at the disposal site. Tier Classification of the site pursuant to the provisions of 310 CMR 40.0500 shall be undertaken by RPs, PRPs, or Other Persons, if necessary, and prior to the initiation of Comprehensive Remedial Actions; or

(2) the requirements of a "Class A" or "Class B" Response Action Outcome have been met, pursuant to the provisions of 310 CMR 40.1000, and a Response Action Outcome Statement shall be submitted to the Department by the RP, PRP, or Other Person conducting response actions.

SUBPART E: TIER CLASSIFICATION AND RESPONSE ACTION DEADLINES

40.0500: Tier Classification and Response Action Deadlines

The regulations published at 310 CMR 40.0500 through 40.0599, cited collectively as 310 CMR 40.0500, establish requirements and procedures for the rendering of LSP Tier Classification Opinions, and deadlines for completing response actions at disposal sites. LSP Tier Classification Opinions are considered by the Department in determining the appropriate level of Departmental oversight for response actions conducted by RPs, PRPs and Other Persons at disposal sites.

40.0501: Scope and Applicability

(1) 310 CMR 40.0500 establishes requirements and procedures for the performance of response actions at Tier I disposal sites, including, but not limited to, requirements for re-scoring such disposal sites and submittal requirements. For Tier I disposal sites, the specific deadlines for RPs, PRPs and Other Persons to achieve a Response Action Outcome pursuant to 310 CMR 40.1000 are determined in accordance with 310 CMR 40.0550 and any other applicable deadlines established in a Tier I Permit issued pursuant to 310 CMR 40.0700.

(2) 310 CMR 40.0500 also establishes requirements and procedures for the performance of response actions at Tier II disposal sites, including, but not limited to, requirements for re-scoring such disposal sites and submittal requirements. For Tier II disposal sites, the specific deadlines for RPs, PRPs and Other Persons to achieve a Response Action Outcome are determined in accordance with 310 CMR 40.0560.

(3) Except as provided in 310 CMR 40.0501(4), all sites for which the Department receives notification of a release or threat of release of oil and/or hazardous material pursuant to 310 CMR 40.0300 on or after October 1, 1993, or has discovered or discovers that a release or threat of release of oil and/or hazardous material has occurred, shall be classified by RPs, PRPs or Other Persons as either a Tier I or Tier II disposal site in accordance with 310 CMR 40.0500. An RP, PRP or Other Person shall submit a Tier Classification Submittal and, if applicable, a Tier I Permit application to the Department by the following deadlines:

- (a) within one year of the earliest date computed in accordance with 310 CMR 40.0404(3); or
- (b) as otherwise specified by the Department in an Interim Deadline pursuant to 310 CMR 40.0167 or order pertaining to such release or threat of release. In the event that multiple deadlines for Tier Classification would be established by 310 CMR 40.0501(3) with respect to any specific disposal site, the earliest of the applicable deadlines shall apply for the purposes of Tier Classification.

(4) Notwithstanding any provision of 310 CMR 40.0501(3) to the contrary, an RP, PRP or Other Person conducting response actions at a disposal site shall not be required to submit a Tier Classification Submittal, and, if applicable, a Tier I Permit Application, if such RP, PRP or Other Person submits either a Response Action Outcome Statement pursuant to 310 CMR 40.1000 or a Downgradient Property Status Submittal pursuant to 310 CMR 40.0180 to the Department within one year of the earliest date computed in accordance with 310 CMR 40.0404(3).

(5) Any person undertaking response actions at a Location To Be Investigated, unclassified disposal site, or non-priority disposal site without a Waiver listed in the 1993 Transition List, or any addendum thereto, shall submit to the Department a Tier Classification Submittal by the applicable deadline established by the Transition Provisions, 310 CMR 40.0600.

(6) An individual Tier Classification Submittal may be for a single discrete disposal site located on one or more parcels of land or to address multiple discrete disposal sites located on a single parcel of land.

(7) An RP, PRP or Other Person may undertake Phase II and Phase III Comprehensive Response Actions pursuant to 310 CMR 40.0800 prior to Tier Classification without the Department's prior approval, unless otherwise prohibited by the Department.

40.0502: Tier ID Disposal Sites

- (1) A disposal site shall be deemed a Tier ID (“default”) disposal site if any of the following apply:
 - (a) an RP, PRP or Other Person for such disposal site fails to submit to the Department one of the following by the applicable deadline in 310 CMR 40.0501:
 1. a Response Action Outcome Statement; or
 2. a Tier Classification Submittal and, if applicable, a Tier I Permit Application;
 - (b) such disposal site had been categorically classified as Tier IB before June 27, 2003 pursuant to 310 CMR 40.0600 or as a result of the failure of an RP, PRP, or Other Person to submit one of the following by the applicable deadline:
 1. a Response Action Outcome Statement;
 2. a Tier Classification Submittal, and, if applicable, a Tier I Permit Application; or
 - (c) the person undertaking response actions is in noncompliance with M.G.L. c. 21E, 310 CMR 40.0000 or any other applicable requirement and the Department reclassifies the disposal site a Tier ID disposal site pursuant to 310 CMR 40.0583.
- (2) An RP, PRP or Other Person shall not conduct Comprehensive Response Actions pursuant to 310 CMR 40.0800 at a Tier ID disposal site.
- (3) An RP, PRP or Other Person for any disposal site that was not previously classified and is deemed a Tier ID disposal site pursuant to 310 CMR 40.0502(1)(a) or (b) shall Tier Classify such disposal site pursuant to the requirements at 310 CMR 40.0510.
- (4) Any disposal site deemed Tier ID by the Department pursuant to 310 CMR 40.0502(c) shall be reclassified as follows:
 - (a) if the disposal site was previously classified pursuant to 310 CMR 40.0510, then the previous classification shall be effective when the Department determines that the RP, PRP, or Other Person has addressed the non-compliance, provided such classification has not expired;
 - (b) if the disposal site was not previously classified, then the RP, PRP, or Other Person shall classify the disposal site pursuant to 310 CMR 40.0510 when the Department determines that the RP, PRP, or Other Person has addressed the non-compliance.
- (5) Notwithstanding 310 CMR 40.0502(1)(b), for the purpose of assessing annual compliance assurance fees in accordance with 310 CMR 4.00 for billable years prior to June 27, 2003, each disposal site for which the Department does not receive a Response Action Outcome Statement, or a Tier Classification Submittal, and, if applicable, an application for a Tier I Permit by the applicable deadline for Tier Classification shall be categorically classified as a Tier IB disposal site on the date of the applicable deadline if such deadline is prior to June 27, 2003.

40.0510: Tier Classification Process

- (1) The Tier Classification process consists of:
 - (a) the completion of a Phase I Report in accordance with 310 CMR 40.0480;
 - (b) the completion of a Numerical Ranking System Scoresheet in accordance with 310 CMR 40.1500;
 - (c) a comparison of conditions at a disposal site with the Tier I Inclusionary Criteria set forth in 310 CMR 40.0520(2);
 - (d) the preparation and filing with the Department of a Tier Classification Submittal in accordance with 310 CMR 40.0510(2); and
 - (e) the public involvement activities relevant to Tier Classification, including, but not limited to, those activities set forth in 310 CMR 40.1403(3) and 40.1403(6). Response actions may be initiated or continued at the disposal site during the comment period described in 310 CMR 40.1403(6)(a), unless otherwise prohibited by the Department.
- (2) A Tier I or Tier II Classification Submittal shall consist of the following:
 - (a) a completed Tier Classification transmittal form using the form established by the Department for such purposes;

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- (b) an LSP Tier Classification Opinion;
 - (c) the certification required by 310 CMR 40.0009;
 - (d) the certification required by 310 CMR 40.0540(1) for a Tier II disposal site; such certification shall be provided in a Permit Application pursuant to 310 CMR 40.0703(9) for a Tier I disposal site;
 - (e) the compliance history required by 310 CMR 40.0540(2) for a Tier II disposal site; such compliance history shall be provided in a Permit Application pursuant to 310 CMR 40.0703(9) for a Tier I disposal site; and
 - (f) one of the following:
 - 1. a Phase II Scope of Work completed in accordance with 310 CMR 40.0834; or
 - 2. a Conceptual Scope of Work that, at a minimum, includes:
 - a. a general plan for assessing contaminants of concern, potential receptors and potential exposure pathways, identifying the likely technical approach(es) to be used;
 - b. a projected schedule that includes interim milestones; and
 - c. an estimate of the cost.
- (3) An LSP Tier Classification Opinion shall consist of:
- (a) a completed Phase I Report, as described in 310 CMR 40.0480;
 - (b) a Numerical Ranking System (NRS) Scoresheet completed in accordance with 310 CMR 40.1500;
 - (c) on the basis of the Tier I Inclusionary Criteria or the score a disposal site receives using the Numerical Ranking System, an LSP Opinion as to whether a disposal site should be classified by the Department as Tier I or Tier II; and if such LSP Opinion indicates that a disposal site should be classified by the Department as Tier I, an LSP Opinion as to whether such disposal site should be categorized as Tier IA, Tier IB or Tier IC for the purposes of permitting pursuant to 310 CMR 40.0700; and
 - (d) any other information required by 310 CMR 40.0520 or 40.0530, including, but not limited to, any other Phase Reports, Status Reports and Completion Statements material to the LSP Tier Classification Opinion.
- (4) In the event that an LSP Tier Classification Opinion indicates that, on the basis of the Tier I Inclusionary Criteria or the disposal site's NRS score, a disposal site should be classified as Tier I, the person submitting the Tier Classification Submittal shall include therein a completed application for a Tier I Permit in accordance with 310 CMR 40.0700.
- (5) Unless otherwise specified by the Department, the Tier Classification effective date shall be the date a complete Tier Classification Submittal is received by the Department. Such Tier Classification shall apply unless and until the RP, PRP or Other Person submits a revised NRS Scoresheet and Tier Classification to the Department pursuant to 310 CMR 40.0530 that reclassifies the disposal site or the Department reclassifies the disposal site pursuant to 310 CMR 40.0583.
- (6) Reclassification of a disposal site does not change the effective date of the Tier Classification.

40.0520: Basis for Tier Classification

- (1) Disposal Site Scoring.
 - (a) Any person performing Tier Classification for a disposal site shall score such disposal site using the Numerical Ranking System described in 310 CMR 40.1500. The disposal site score shall be based upon data, facts and other information obtained during Phase I, and any other relevant data, facts or information known by the person performing Tier Classification, including, but not limited to, any data, facts or information obtained during a Phase II - Comprehensive Site Assessment, if Phase II work has been performed at such disposal site.
 - (b) All relevant data, facts and other information considered during Tier Classification shall be documented in the applicable Phase Report(s) and the LSP Tier Classification Opinion. LSPs shall use the Response Action Performance Standard in 310 CMR 40.0191 to develop an LSP Tier Classification Opinion.

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(c) Any person performing Tier Classification may account for risk reduction measures, if any, that have been completed at the disposal site pursuant to 310 CMR 40.0400 prior to performing such Tier Classification, including Immediate Response Actions, Release Abatement Measures and Utility-related Abatement Measures.

(2) Tier I Inclusionary Criteria.

(a) Any disposal site which meets any of the following criteria shall be categorically classified as Tier I, regardless of the score such disposal site receives using the Numerical Ranking System:

1. any disposal site at which:

- a. there is evidence of groundwater contamination with oil and/or hazardous material at concentrations equal to or exceeding the applicable RCGW-1 Reportable Concentration set forth in 310 CMR 40.0360 at the time of Tier Classification, and
- b. such groundwater is located within an Interim Wellhead Protection Area or Zone II; or

2. any disposal site at which an Imminent Hazard is present at the time of Tier Classification.

(b) Any disposal site that is classified as Tier I only because such disposal site meets the criteria set forth in 310 CMR 40.0520(2)(a)2. may be reclassified as Tier II pursuant to 310 CMR 40.0530 once the Imminent Hazard is no longer present at the disposal site.

(c) For the purpose of assessing annual compliance assurance fees in accordance with 310 CMR 4.00 for billable years prior to June 27, 2003, each disposal site for which the Department does not receive one of the following by the applicable deadline for Tier Classification shall be categorically classified as a Tier IB disposal site on the date of the applicable deadline if such deadline is prior to June 27, 2003.

1. a Response Action Outcome Statement, or

2. a Tier Classification Submittal, and, if applicable, an application for a Tier I Permit.

(d) Each disposal site for which the deadline for Tier Classification pursuant to 310 CMR 40.0501(3) is prior to February 1, 1995, and for which the Department has not received a Tier Classification Submittal or a Response Action Outcome Statement by February 24, 1995, shall be categorically classified as Tier IB, effective February 24, 1995.

(3) NRS Cut-off Scores. The score a disposal site receives using the Numerical Ranking System shall serve as the basis for the LSP Tier Classification Opinion as follows:

(a) any disposal site receiving a total score equal to or greater than 550 shall be considered Tier IA;

(b) any disposal site receiving a total score less than 550 and equal to or greater than 450 shall be considered Tier IB;

(c) any disposal site receiving a total score less than 450 and equal to or greater than 350 shall be considered Tier IC; and

(d) any disposal site receiving a total score of less than 350 shall be considered Tier II, unless such disposal site meets any of the Tier I Inclusionary Criteria specified in 310 CMR 40.0520(2)(a), in which case the disposal site shall be considered Tier IC.

40.0530: Reclassification by RPs, PRPs, or Other Persons During Response Actions

(1) An RP, PRP or Other Person performing response actions at a disposal site following Tier Classification shall re-evaluate such disposal site using the Numerical Ranking System and the Tier I Inclusionary Criteria specified in 310 CMR 40.0520(2)(a)1. if he or she obtains new or additional data, facts or other information which is reasonably likely to result in a finding that would cause reclassification of the disposal site from Tier II to Tier I, from Tier IC to Tier IA or Tier IB, or, from Tier IB to Tier IA.

(2) An RP, PRP or Other Person performing response actions at a Tier II disposal site that receives a total score equal to or greater than 350 or meets the Tier I Inclusionary Criteria upon re-evaluating the disposal site shall submit to the Department a Tier Classification Submittal and an application for a Tier I Permit in accordance with 310 CMR 40.0700 within 60 days of obtaining knowledge of such score.

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- (3) An RP, PRP or Other Person performing response actions at a Tier IC disposal site that receives a total score equal to or greater than 450 upon re-evaluating the disposal site shall submit an application to the Department for a Major Modification of a Tier I Permit in accordance with 310 CMR 40.0707 to upgrade the permit category to Tier IB or Tier IA within 60 days of obtaining knowledge of such score.
- (4) An RP, PRP or Other Person performing response actions at a Tier IB disposal site that receives a total score equal to or greater than 550 upon re-evaluating the disposal site shall submit an application to the Department for a Major Modification of a Tier I Permit in accordance with 310 CMR 40.0707 to upgrade the permit category to Tier IA within 60 days of obtaining knowledge of such score.
- (5) An RP, PRP or Other Person may downgrade the Tier Classification category of a disposal site after re-evaluating the disposal site pursuant to 310 CMR 40.0530. To do so, an RP, PRP or Other Person for a Tier IA, Tier IB or Tier IC disposal site shall submit a revised Tier Classification Submittal and an application for a Major Permit Modification to the Department in accordance with 310 CMR 40.0707.
- (6) Except as otherwise specified by the Department, reclassification of a disposal site by an RP, PRP or Other Person who has been performing and is continuing to perform response actions at such disposal site shall not change the original deadlines applicable to such disposal site as detailed in 310 CMR 40.0550(1) and (2) or 310 CMR 40.0560(1) and (2), as they originally applied.

40.0540: Demonstration of Ability and Willingness

- (1) Each person filing a Tier Classification Submittal for a Tier II disposal site with the Department shall include the certification required by 310 CMR 40.0009 and the following written declaration:
"I attest under the pains and penalties of perjury that (i) I/the person(s) or entity(ies) on whose behalf this submittal is made has/have personally examined and am/is familiar with the requirements of M.G.L. c. 21E and 310 CMR 40.0000; (ii) based upon my inquiry of the/those Licensed Site Professional(s) employed or engaged to render Professional Services for the disposal site which is the subject of this Transmittal Form and of the person(s) or entity(ies) on whose behalf this submittal is made, and my/that person's(s') or entity's(ies') understanding as to the estimated costs of necessary response actions, that/those person(s) or entity(ies) has/have the technical, financial and legal ability to proceed with response actions for such site in accordance with M.G.L. c. 21E, 310 CMR 40.0000 and other applicable requirements; and (iii) that I am fully authorized to make this attestation on behalf of the person(s) or entity(ies) legally responsible for this submittal. I/the person(s) or entity(ies) on whose behalf this submittal is made is aware of the requirements in 310 CMR 40.0172 for notifying the Department in the event that I/the person(s) or entity(ies) on whose behalf this submittal is made am/is(are) unable to proceed with the necessary response actions."
- (2) Each person filing a Tier II Classification Submittal with the Department shall include therein a statement detailing such person's history of compliance with the Department's regulations, including, but not limited to, M.G.L. c. 21E, 310 CMR 40.0000, and other laws for the protection of health, safety, public welfare and the environment administered or enforced by the Department or other federal, state and local government agencies, that are relevant to conditions at the disposal site.
- (3) Each person filing a Tier Classification Submittal for a Tier I disposal site shall provide the certifications required with a Tier I Permit Application in accordance with 310 CMR 40.0703(9).

40.0550: Response Action Deadlines and Requirements for Tier I Disposal Sites

(1) Deadlines for Response Action Outcomes. Except as expressly provided by 310 CMR 40.0530(6) or 310 CMR 40.0000 or as otherwise ordered or agreed to in writing by the Department, any person undertaking response actions at a Tier I disposal site pursuant to a Tier I Permit, as described in 310 CMR 40.0700, shall achieve a Response Action Outcome pursuant to 310 CMR 40.1000 within five years of the effective date of such permit.

(2) Deadlines for Submittals. Except as expressly provided by 310 CMR 40.0530(6), 310 CMR 40.0550(3), or 310 CMR 40.0000, or as otherwise ordered or agreed to in writing by the Department, any person undertaking response actions at a Tier I disposal site pursuant to a Tier I Permit shall submit the following documents to the Department by the following deadlines:

- (a) a scope of work for a Phase II - Comprehensive Site Assessment pursuant to 310 CMR 40.0834 prior to the implementation of Phase II field work, unless the Phase II field work had been implemented prior to Tier Classification;
- (b) Phase II Report, and, if applicable, a Phase III Remedial Action Plan within two years of the effective date of such permit;
- (c) a Phase IV Remedy Implementation Plan within three years of the effective date of such permit;
- (d) a Response Action Outcome Statement pursuant to 310 CMR 40.1000 within five years of the effective date of such permit; and
- (e) any other submittal as required by the terms and conditions of a Tier I Permit pursuant to 310 CMR 40.0740.

(3) Notwithstanding any provision of 310 CMR 40.0550(2) to the contrary, submittal to the Department of those documents described in 310 CMR 40.0550(2)(a) through (c) shall not be required at any disposal site for which a Response Action Outcome Statement is submitted to the Department prior to an applicable document submittal deadline.

(4) Approvals for Tier I Disposal Sites.

- (a) Except as provided in 310 CMR 40.0550(4)(b), an RP, PRP or Other Person undertaking response actions at a Tier I disposal site pursuant to a Tier I Permit may perform the response actions which are the subject of the submittals required by 310 CMR 40.0550(2) without the Department's prior approval thereof.
- (b) Notwithstanding 310 CMR 40.0550(4)(a), the Department may at any time require an RP, PRP or Other Person undertaking response actions at a Tier I disposal site to obtain prior Departmental approval of one or more of the submittals specified by 310 CMR 40.0550(2) or the response actions or submittals required pursuant to 310 CMR 40.0800. The Department may require such prior approval for submittals or response actions as they relate to the entire disposal site or to some portion thereof.

(5) Notification of Delay in Compliance With Deadlines for Tier IA, Tier IB and Tier IC Disposal Sites. Except as provided by 310 CMR 40.0025 and 40.0167, the RP, PRP or Other Person performing response action shall notify the Department in writing prior to missing any of the following deadlines or time periods, and state the reason for such delay, the measure or measures to be taken to minimize the delay, the schedule for implementing those measures, and shall take appropriate measures to minimize any delay in compliance with any deadline or time period required by 310 CMR 40.0550(2), in conditions in a Permit issued pursuant to 310 CMR 40.0700, or any other determination or deadline for response actions set forth in writing by the Department.

Providing such notice does not forgive an RP's, PRP's or Other Person's noncompliance with deadlines for response actions in 310 CMR 40.0000.

(6) Notifications. After permitting pursuant to 310 CMR 40.0700, an RP, PRP or Other Person for a Tier IA, Tier IB or Tier IC disposal site shall make the following notifications to the Department within the following timeframes:

- (a) notification of the commencement of initial field activities related to the implementation of Comprehensive Response Actions at least seven days prior to their initiation. Upon such notification, the Department may impose conditions on and/or arrange to observe the conduct of field work including, but not limited to, the installation of monitoring wells, the excavation of test pits, field sampling of environmental media, soil removal, installation of groundwater recovery systems, the start of Phase IV construction activities, and observation of Phase V monitoring activities; and

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- (b) any other notifications specified in a Tier I Permit within the required timeframes.

40.0560: Response Action Deadlines and Requirements for Tier II Disposal Sites

(1) Deadlines for Response Action Outcomes. Except as expressly provided by 310 CMR 40.0530(6) or 310 CMR 40.0000 or as otherwise ordered or agreed to in writing by the Department, an RP, PRP or Other Person undertaking response actions at a Tier II disposal site shall achieve a Response Action Outcome within five years of the effective date of initial Tier Classification.

- (a) A Tier II Classification for a disposal site shall expire five years from the effective date of the initial Tier Classification of such disposal site; and

- (b) An RP, PRP or Other Person shall not conduct Comprehensive Response Actions pursuant to 310 CMR 40.0800 at a disposal site for which a Tier II Classification has expired unless a Tier II Classification Extension is obtained pursuant to 310 CMR 40.0560(7).

(2) Deadlines for Submittals. Except as provided by 310 CMR 40.0530(6), 310 CMR 40.0560(3), or 310 CMR 40.0000 or as otherwise ordered or agreed to in writing by the Department, an RP, PRP or Other Person undertaking response actions at a Tier II disposal site shall submit the following documents to the Department by the following deadlines:

- (a) a scope of work for a Phase II - Comprehensive Site Assessment pursuant to 310 CMR 40.0834 prior to the implementation of Phase II field work, unless the Phase II field work had been implemented prior to Tier Classification;

- (b) a Phase II Report, and, if applicable, a Phase III Remedial Action Plan, within two years of the effective date of Tier Classification;

- (c) a Phase IV Remedy Implementation Plan within three years of the effective date of Tier Classification; and

- (d) a Response Action Outcome Statement pursuant to 310 CMR 40.1000 within five years of the effective date of Tier Classification.

(3) Notwithstanding any provision of 310 CMR 40.0560(2) to the contrary, submittal to the Department of those documents described in 310 CMR 40.0560(2)(a) through (c) shall not be required at any disposal site for which a Response Action Outcome Statement is submitted to the Department prior to an applicable document submittal deadline.

(4) Approvals and Notice.

- (a) Except as provided in 310 CMR 40.0560(4)(b), an RP, PRP or Other Person undertaking response actions at a Tier II disposal site may perform the response actions which are the subject of the submittals required by 310 CMR 40.0560(2) without the Department's prior approval thereof.

- (b) Notwithstanding 310 CMR 40.0560(4)(a), the Department may at any time require an RP, PRP or Other Person undertaking response actions at a Tier II disposal site to obtain prior Departmental approval of one or more of the submittals specified by 310 CMR 40.0560(2) or the response actions or submittals required pursuant to 310 CMR 40.0800. The Department may require such prior approval for submittals or response actions as they relate to the entire the disposal site or to some portion thereof.

- (c) No person shall perform Phase IV response actions at a Tier II disposal site unless and until 20 days have passed from the date of publication of the notice required by 310 CMR 40.1403(6).

(5) Notification of Delay in Compliance With Deadlines for Tier II Disposal Sites. Except as provided by 310 CMR 40.0025 or 40.0167, if any delay in compliance with any deadline or time period required by 310 CMR 40.0560(2) occurs after a disposal site is classified as Tier II, the RP, PRP or Other Person performing response action shall notify the Department in writing prior to missing any such deadline or time period, and state the reason for such delay, the measure or measures to be taken to minimize the delay and a proposed schedule for implementing those measures, and shall take appropriate measures to minimize the delay. Providing such notice does not forgive an RP's, PRP's or Other Person's noncompliance with deadlines for response actions in 310 CMR 40.0000.

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(6) Notifications. RPs, PRPs or Other Persons conducting response actions at Tier II disposal sites shall make the following notifications to the Department within the following timeframes. Notification of the commencement of initial field activities related to the implementation of Comprehensive Response Actions at least seven days prior to their initiation. Upon such notification, the Department may impose conditions on and/or arrange to observe the conduct of field work including, but not limited to, the installation of monitoring wells, the excavation of test pits, field sampling of environmental media, soil removal, installation of groundwater recovery systems, the start of Phase IV construction activities, and observation of Phase V monitoring activities.

(7) Tier II Classification Extensions.

- (a) If a Response Action Outcome Statement indicating that a Temporary or Permanent Solution has been achieved has not been submitted to the Department for a Tier II disposal site prior to the expiration of the Tier II Classification, the person undertaking response actions at such site shall extend the Tier II Classification by submitting a Tier II Extension Submittal to the Department.
- (b) The Tier II Extension Submittal shall be provided to the Department at least 45 days before the date of expiration of the Tier II Classification.
- (c) The Tier II Extension Submittal shall consist of the following:
 - 1. a completed transmittal form using a form provided by the Department for such purposes, which shall include a statement explaining why a Temporary or Permanent Solution has not been achieved at the site.
 - 2. a description of the status of response actions including a plan and a proposed schedule for implementing such plan which details the steps that will be taken in order to achieve, at a minimum, a Class C Response Action Outcome at the disposal site pursuant to 310 CMR 40.1000 within one year of the effective date of the Tier II Classification Extension, and a schedule for achieving a Permanent Solution, if feasible;
 - 3. the certification required by 310 CMR 40.0009;
 - 4. the certification required by 310 CMR 40.0540(1);
 - 5. an updated compliance history required by 310 CMR 40.0540(2) since the effective date of the Tier II Classification; and
 - 6. an LSP Opinion indicating that the plans and/or reports submitted are in conformance with the requirements of 310 CMR 40.0000.
- (d) A Tier II Classification Extension shall take effect 45 days after submission of a complete Tier II Extension Submittal to the Department unless the Department issues a written denial for such extension prior to the termination of such 45 day time period. The extension shall be effective for a period of one year beyond the effective date of the Tier II Classification Extension. An RP, PRP or Other Person shall notify the Department pursuant to this section if additional extensions are required on an annual basis thereafter; and
- (e) The Department reserves the right to reconsider the need for Departmental oversight or to initiate enforcement actions related to any Tier II Extension Submittal or when any timeline for achieving an RAO pursuant to 310 CMR 40.0560 is exceeded; and
- (f) A Tier II Extension obtained under 310 CMR 40.0560(7) does not forgive an RP's, PRP's or Other Person's noncompliance with any provisions of 310 CMR 40.0000, including but not limited to, noncompliance that resulted from the late submittal or failure to submit an IRA Plan, Status Report, Phase I Report, Tier Classification, Phase II Report, Phase III Remedial Action Plan, Phase IV Remedy Implementation Plan, and/or failure to achieve a Response Action Outcome. A Tier II Extension means the RP, PRP or Other Person has approval to continue with response actions in compliance with all applicable provisions of 310 CMR 40.0000. Such Extension shall not be construed as approval by the Department of the scope or adequacy of plans or of the response actions as actually conducted.

(8) Changes in Persons Undertaking Response Actions at Tier II Disposal Sites.

- (a) No person other than a person who has filed a Tier II Classification Submittal for a disposal site with the Department may perform Comprehensive Response Actions at such disposal site, unless that person submits a Tier II Transfer Submittal to the Department.
- (b) A Tier II Transfer Submittal shall consist of the following:

40.0560: continued

1. a completed transmittal form using a form provided by the Department for such purposes, which shall include a statement and/or report explaining the reasons for the change in persons undertaking response actions and a proposed effective date for such change.
 2. a listing of all Status and Phase Reports for response actions completed since the effective date of the Tier II Classification or Waiver of Approvals;
 3. the certification required by 310 CMR 40.0009 by the current RP, PRP or Other Person for such disposal site and by the transferee;
 4. the certification required by 310 CMR 40.0540(1) by the transferee;
 5. the compliance history required by 310 CMR 40.0540(2) for the transferee; and
 6. an LSP Opinion indicating that the plans and/or reports submitted are in conformance with the requirements of these regulations.
- (c) A change in persons conducting response actions at a Tier II disposal site shall take effect 45 days after submission of a complete Tier II Transfer Submittal to the Department unless the Department issues a written denial of such transfer prior to the termination of such 45 day time period.
- (d) The Department reserves the right to reconsider the need for Departmental oversight or to initiate enforcement actions related to any Tier II Transfer Submittal or when any timeline for achieving an RAO pursuant to 310 CMR 40.0560 at a Tier II disposal site is not met.

40.0580: Periodic Evaluation of Temporary Solutions at Tier I and Tier II Disposal Sites

- (1) At any Tier I or Tier II disposal site where a Temporary Solution has been implemented and a Class C RAO Statement or a Waiver Completion Statement indicating that a Temporary Solution has been achieved has been submitted to the Department, the RP, PRP or Other Person shall undertake a periodic evaluation of the Temporary Solution and shall submit to the Department an LSP Periodic Review Opinion evaluating the status of the Temporary Solution not less than every fifth year after the date of filing of such Class C Response Action Outcome Statement or Waiver Completion Statement.
- (2) If a Class C Response Action Outcome Statement or Waiver Completion Statement indicating that a Temporary Solution has been achieved has been filed with the Department for a disposal site, neither a Permit Extension nor a Tier II Classification Extension shall be required solely to perform a periodic evaluation of the Temporary Solution at such disposal site, unless otherwise required by the Department.
- (3) Content of a Periodic Review Opinion for a Temporary Solution Evaluation. The LSP Periodic Review Opinion required by 310 CMR 40.0580(1) shall address the following:
- (a) the effectiveness of the Temporary Solution(s);
 - (b) any changes in activities, uses and/or exposures that may cause an actual or potential increase in exposure for human or environmental receptors to oil and/or hazardous material;
 - (c) if applicable, an evaluation of an Activity and Use Limitation pursuant to 310 CMR 40.1080;
 - (d) any necessary and required response actions to maintain the Temporary Solution and, if applicable, the Activity and Use Limitation, in the event that the Temporary Solution and/or the Activity and Use Limitation is no longer maintaining No Significant Risk for the disposal site; such response actions shall be initiated pursuant to 310 CMR 40.0581 or 40.0582, whichever is applicable;
 - (e) the feasibility of implementing one or more Permanent Solutions for the disposal site pursuant to 310 CMR 40.0861(2)(h); and
 - (f) the certification required in 310 CMR 40.0009.

40.0581: Conducting Response Actions at a Tier I Disposal Site After a Response Action Outcome has been Submitted to the Department

- (1) Each person who intends to conduct any of the response actions listed below shall either conduct such response actions in accordance with an effective Tier I Permit or obtain a Permit Extension from the Department in accordance with 310 CMR 40.0703 and 40.0706:
- (a) implement a Permanent Solution at a Tier I disposal site after a Class C Response Action Outcome Statement has been submitted to the Department;

40.0581: continued

- (b) implement response actions pursuant to 310 CMR 40.1080 at a disposal site where an Activity and Use Limitation is in place in order to maintain No Significant Risk;
- (c) conduct further response actions at a disposal site where an Activity and Use Limitation is in place in order to withdraw such Limitation in order to allow certain site uses or activities which are prohibited pursuant to the existing Activity and Use Limitation; or
- (d) implement response actions after a Periodic Evaluation conducted pursuant to 310 CMR 40.0580(1) reveals that more substantial response actions are required to maintain the Temporary Solution at such disposal site other than those that may be conducted for normal maintenance of the Class C RAO pursuant to a post-Class C RAO Operation, Maintenance and/or Monitoring Plan pursuant to 310 CMR 40.0896.

(2) Each person who intends to conduct response actions pursuant to 310 CMR 40.0581(1) in accordance with an effective Tier I Permit shall notify the Department in writing of such intent prior to implementing such actions.

(3) Each person who intends to conduct response actions pursuant to 310 CMR 40.0581(1) shall submit with the Tier I Permit Extension required by 310 CMR 40.0581(1) or the notice described in 310 CMR 40.0581(2), whichever is applicable, those reports, plans and proposed schedules required for such response actions pursuant to 310 CMR 40.0581(1).

(4) The Department will assess the applicable annual compliance assurance fee in accordance with 310 CMR 4.00 upon approval of any Tier I Permit Extension required by 310 CMR 40.0581(1) or upon receipt of the notice required by 310 CMR 40.0581(2), whichever is applicable.

40.0582: Conducting Response Actions at a Tier II Disposal Site after a Response Action Outcome has been Submitted to the Department

(1) A person who intends to conduct any of the response actions listed below shall either conduct such response actions in accordance with an effective Tier II Classification or obtain a Tier II Classification Extension pursuant to 310 CMR 40.0560(7):

- (a) implement a Permanent Solution at a Tier II disposal site after a Class C Response Action Outcome Statement has been submitted to the Department;
- (b) implement response actions pursuant to 310 CMR 40.1080 at a disposal site where an Activity and Use Limitation is in place in order to maintain No Significant Risk;
- (c) conduct further response actions at a disposal site where an Activity and Use Limitation is in place in order to withdraw such Limitation in order to allow certain site uses or activities which are prohibited pursuant to the existing Activity and Use Limitation; or
- (d) implement response actions after a Periodic Evaluation conducted pursuant to 310 CMR 40.0582(1) reveals that more substantial response actions are required to maintain the Temporary Solution at such disposal site other than those that may be conducted for normal maintenance of the Class C RAO pursuant to a post-Class C RAO Operation, Maintenance and/or Monitoring Plan pursuant to 310 CMR 40.0896.

(2) Each person who intends to conduct response actions pursuant to 310 CMR 40.0582(1) and who is not the person who submitted the applicable RAO for the disposal site shall comply with the provisions of 310 CMR 40.0560(8) prior to implementing such response actions.

(3) Each person who intends to conduct response actions pursuant to 310 CMR 40.0582(1) in accordance with an effective Tier II Classification shall notify the Department in writing of such intent prior to implementing such actions.

(4) Each person who intends to conduct response actions pursuant to 310 CMR 40.0582(1) shall submit with the Tier II Extension Submittal required by 310 CMR 40.0582(1) or the notice described in 310 CMR 40.0582(3), whichever is applicable, those reports, plans and proposed schedules required for such response actions pursuant to 310 CMR 40.0582(1).

40.0582: continued

(5) The Department will assess Tier II annual compliance assurance fees in accordance with 310 CMR 4.00 upon receipt of any Tier II Extension Submittal required by 310 CMR 40.0582(1) or upon receipt of the notice required by 310 CMR 40.0582(3), whichever is applicable.

40.0583: Department Reclassification of a Tier Classified Disposal Site

(1) General. The Department may, on its own initiative, reclassify a Tier IA, Tier IB, Tier IC, Tier ID or Tier II disposal site to a different Tier Classification pursuant to 310 CMR 40.0583

(2) Effect of Reclassification. A Reclassification made in accordance with 310 CMR 40.0583 shall have the effect of superseding the existing site classification.

(3) Criteria. The Department shall consider the criteria in 310 CMR 40.0730(1) when reclassifying a Tier Classified disposal site.

40.0584: Participation by the Public, RPs, PRPs, and Other Persons in Department Reclassification

(1) Within seven days of reclassifying a Tier Classified disposal site pursuant to 310 CMR 40.0583, the Department shall provide notice to the public of the Reclassification as follows:

- (a) by publishing a legal notice in a newspaper which circulates in the community(ies) in which the disposal site is located and in any newspapers which circulate in any other community(ies) the Department believes are likely to be affected by the disposal site;
- (b) by mail or hand delivery of a copy of the legal notice to the Chief Municipal Officer and Board of Health in the community(ies) in which the disposal site is located and in any other community(ies) which the Department believes are likely to be affected by the disposal site;
- (c) by mail or hand delivery to any person the Department reasonably believes:
 - 1. is an RP or a PRP for the disposal site;
 - 2. if applicable, is the permittee of a Tier Classified disposal site;
 - 3. holds title to, or an ownership interest in any real property comprising the disposal site or portion thereof or which may be affected by the disposal site and whose name and address is known to the Department at the time the Department decides to re-classify the disposal site; and
 - 4. is the operator of the disposal site, if different from the owner;
- (d) if the disposal site is a Public Involvement Plan (PIP) site, by mail to each person whose name and address appears on the PIP mailing list established pursuant to 310 CMR 40.1400;

(2) Content of Notice. The notice required by 310 CMR 40.0584(1) shall include, but not be limited to, the following information:

- (a) the name and address of the disposal site;
- (b) the DEP Release Tracking Number(s), and the permit number;
- (c) the intended Reclassification category of the disposal site; and
- (d) a statement of the basis for the Reclassification.

40.0585: Right to Request an Adjudicatory Hearing

(1) Any person who is aggrieved by a decision of the Department to reclassify a disposal site pursuant to 310 CMR 40.0583 to a Tier Classification category that is higher than the previous classification may request an adjudicatory hearing before the Department in accordance with 310 CMR 40.0050.

(2) A request for adjudicatory hearing pursuant to 310 CMR 40.0585 shall:

- (a) comply with 310 CMR 40.0050 and 310 CMR 1.00; and
- (b) state the reason(s) the decision to reclassify does not comply with 310 CMR 40.0000.

(3) The adjudicatory hearing shall be limited to the issue of whether the Department's decision to reclassify is in accordance with the criteria set forth in 310 CMR 40.0583(3).

40.0590: Public Involvement

Public involvement activities shall be conducted in accordance with 310 CMR 40.1400 through 40.1406. Public involvement requirements relevant to Tier Classification include, but are not limited to, those activities set forth at 310 CMR 40.1403(6) and 40.1406(3).

SUBPART F: TRANSITION PROVISIONS

40.0600: Transition Provisions

310 CMR 40.0601 through 40.0699, cited collectively as 310 CMR 40.0600, sets forth the requirements for RPs, PRPs and Other Persons with disposal sites and Locations To Be Investigated (LTBIs) identified on the Transition List of Confirmed Disposal Sites and Locations To Be Investigated (the 1993 Transition List) and any addendum thereto, published by the Department in accordance with M.G.L. c. 21E, § 3A(a) and 310 CMR 40.0168(1).

40.0601: Scope and General Provisions

(1) The 1993 Transition List and 310 CMR 40.0600 shall be referenced by RPs, PRPs and Other Persons to determine the status of listed disposal sites and LTBIs and the deadlines for undertaking response actions at such disposal sites and locations pursuant to 310 CMR 40.0000. The applicable deadline for an RP, PRP or Other Person to submit an LSP Evaluation Opinion or statement in accordance with 310 CMR 40.0610, 40.0620, and 40.0636 shall be based upon the date such site was first listed on any Department "List of Confirmed Disposal Sites and Locations To Be Investigated" in the same category in which it is listed on the 1993 Transition List.

(2) Notwithstanding the deadlines set forth in 310 CMR 40.0600, the Department may establish Interim Deadlines for RPs, PRPs and Other Persons to submit LSP Evaluation Opinions pursuant to 310 CMR 40.0600 and/or to conduct response actions at LTBIs or disposal sites. The Department may require RPs, PRPs and Other Persons to submit LSP Evaluation Opinions and/or conduct response actions for specific disposal sites or LTBIs on a case-by-case basis earlier than the deadline applicable pursuant to 310 CMR 40.0610, 40.0620, or 40.0636.

(3) An RP, PRP or Other Person who is conducting or continues to conduct response actions at a disposal site or Location To Be Investigated subject to the Transition Provisions on or after October 1, 1993, shall conduct such response actions in accordance with the applicable requirements of 310 CMR 40.0600.

(4) Notwithstanding the deadlines set forth in 310 CMR 40.0610(3), 40.0620(3), and 40.0636(3), releases and threats of release of oil and/or hazardous material which require a "2 Hour" or "72 Hour" notification pursuant to 310 CMR 40.0311 through 40.0314 shall be made to the Department within the applicable timeframes specified in 310 CMR 40.0311 through 40.0314.

(5) Any LSP Evaluation Opinion submitted to the Department pursuant to 310 CMR 40.0600 shall be submitted on a form established by the Department for such purposes.

(6) Additional Transition Provision for Certain LTBIs, Unclassified Sites and Non-priority Disposal Sites without Waivers. Except as provided by 310 CMR 40.0601(2), the deadline of August 2, 1995, and the deadline of August 2, 1996, specified in 310 CMR 40.0610(3), 40.0620(3), and 40.0636(3), for submittal of a Tier Classification Submittal, an LSP Evaluation Opinion, a Response Action Outcome Statement or a statement affirming the conclusions in a previously filed Phase I Report, whichever is applicable, shall be extended to the date that is 90 days after the effective date of the first revision to the definition of the term "Potentially Productive Aquifer" in 310 CMR 40.0006 and to 310 CMR 40.0932(5)(b) promulgated after December 15, 1995, provided that the following conditions are met:

(a) Such applicable deadline shall be extended where:

1. The groundwater at such location or disposal site is defined as Category GW-1 solely because it is within a Potentially Productive Aquifer pursuant to 310 CMR 40.0932(4)(b); and/or
2. The soil at such location or disposal site lies above groundwater which is defined as GW-1 solely because the groundwater is within a Potentially Productive Aquifer pursuant to 310 CMR 40.0932(4)(b).

(b) To extend a deadline based on the conditions of 310 CMR 40.0601(6), the RP, PRP or Other Person subject to the deadline shall submit a written statement to the Department on or before such deadline, indicating his or her intention to submit a Tier Classification Submittal, an LSP Evaluation Opinion, a Response Action Outcome Statement, or a statement affirming the conclusions in a previously filed Phase I Report (as appropriate) by the extended deadline.

NON-TEXT PAGE

40.0642: continued

(2) On or after October 1, 1993, an LSP Evaluation Opinion or a Response Action Outcome Statement pursuant to 310 CMR 40.1000 may be submitted to the Department in place of a No Further Action Letter submitted pursuant to 310 CMR 40.0642(1). Such Opinion or RAO Statement shall be based upon the provisions of 310 CMR 40.0000 and shall not be subject to Departmental approval.

(3) Should an RP, PRP or Other Person not submit to the Department a No Further Action Letter pursuant to 310 CMR 40.000, the 1988 regulations, before October 1, 1993, all future response actions for such disposal site shall be conducted in accordance with the requirements of 310 CMR 40.0000. Any applicable time periods for compliance with achieving a Response Action Outcome and for assessment of annual compliance assurance fees pursuant to 310 CMR 4.00 shall commence to run on October 1, 1993.

(4) Should the Department learn or conclude on or after October 1, 1993, that locations subject to 310 CMR 40.0642 are disposal sites for which additional response actions are required, the Department may classify such disposal sites as Tier IA, IB, IC, or Tier II pursuant to 310 CMR 40.0500 based upon available information. RPs, PRPs or Other Persons for such disposal sites shall be assessed applicable annual compliance assurance fees pursuant to 310 CMR 4.00.

40.0650: Remedial Sites

(1) For the purposes of 310 CMR 40.0000, remedial sites listed on the 1993 Transition List as having Permanent Solutions shall be deemed to have achieved a Response Action Outcome pursuant to 310 CMR 40.1000.

(2) For the purposes of 310 CMR 40.0000, remedial sites listed on the 1993 Transition List as having Temporary Solutions shall be considered as having achieved a Response Action Outcome pursuant to 310 CMR 40.1000.

(3) All other remedial sites listed on the 1993 Transition List shall not require further response actions unless new information becomes available to an RP, PRP, Other Person or the Department that indicates that a site condition requires notification pursuant to 310 CMR 40.0300, or that a Temporary or Permanent Solution is no longer effective in protecting health, safety, public welfare and the environment pursuant to 310 CMR 40.0000. RPs, PRPs or Other Persons may re-evaluate such sites in order to determine their applicable Response Action Outcome status pursuant to the provisions of 310 CMR 40.1000.

40.0660: Deleted Sites

(1) Deleted sites listed on the 1993 Transition List as being "Deleted-Not a Site" shall not be considered sites subject to further response actions pursuant to 310 CMR 40.0000 unless an RP, PRP, Other Person or the Department has knowledge or obtains knowledge that site conditions have changed since the site's deletion such that concentrations of oil and/or hazardous material constitute a release of oil and/or hazardous material which requires notification in accordance with 310 CMR 40.0300.

(2) Deleted sites listed on the 1993 Transition List as "Deleted-No Further Action" shall not require further response actions unless an RP, PRP, Other Person or the Department has knowledge or obtains knowledge that site conditions have changed since the site's deletion such that concentrations of oil and/or hazardous material constitute a release of oil and/or hazardous material which requires notification in accordance with 310 CMR 40.0300.

40.0670: Effect on a Consent Order, Decree, or Departmental Memorandum of Understanding

(1) An administrative consent order issued pursuant to M.G.L. c. 21E, § 9, a judicial consent decree or Departmental Memorandum of Understanding (MOU) signed, filed and/or effective before October 1, 1993 for a disposal site, shall remain in effect until their terms are fulfilled unless otherwise specified in such orders, decrees, or MOUs, or as agreed to in writing by the Department. All such disposal sites shall be categorically classified as Tier IA disposal sites for the purposes of oversight by the Department in accordance with 310 CMR 40.0000 and shall be assessed Tier IA annual compliance assurance fees pursuant to 310 CMR 4.00 unless:

- (a) with respect to an administrative consent order, as otherwise ordered by the Department;
- (b) with respect to a consent decree, as otherwise ordered by the appropriate court; or
- (c) with respect to an MOU, as otherwise stipulated in such MOU.

(2) The Department will review whether the parties to consent orders are in compliance with such orders. If the Department determines that such parties are not in compliance with such orders, the Department may take appropriate enforcement action including, but not limited to, the following:

- (a) requiring the parties to submit a Tier Classification Submittal and Permit Application, and incorporating the consent order in a Tier I Permit;
- (b) requiring the parties to submit a Tier Classification Submittal and Permit Application, and negating the consent order; or
- (c) enforcing the terms of the consent order or decree.

(3) For disposal sites where parties are in compliance with the terms of consent orders or decrees, the terms of such orders or decrees shall remain in effect unless and until otherwise modified by an order or decree. Such parties shall not be required to obtain a Tier I Permit pursuant to 310 CMR 40.0700 in order to conduct any work approved pursuant to such consent order or decree.

(4) The parties to consent orders, decrees or MOUs may request that such orders, decrees or MOUs be amended to allow response actions to be conducted pursuant to 310 CMR 40.0000.

SUBPART G: TIER I PERMITS

40.0700: Tier I Permits

The regulations published at 310 CMR 40.0700 through 40.0799, cited collectively as 310 CMR 40.0700, establish the requirements, standards and procedures for obtaining, modifying, transferring, extending, suspending and revoking Tier I Permits. The regulations published at 310 CMR 4.00, which govern permit application fees, annual compliance assurance fees and schedules for timely action, also apply to Tier I Permits and shall be consulted as necessary.

40.0702: Applicability

(1) Except as provided in 310 CMR 40.0000, including, but not limited to, 310 CMR 40.0702(4), a Tier I Permit is required to conduct Comprehensive Response Actions pursuant to 310 CMR 40.0870 for any disposal site classified as Tier IA, Tier IB or Tier IC pursuant to 310 CMR 40.0500 or 40.0600.

(2) No person shall continue to perform Comprehensive Response Actions under 310 CMR 40.0870 at a disposal site classified as Tier II after he or she obtains reason to believe that, as a result of new or additional information obtained and/or as a result of re-scoring pursuant to 310 CMR 40.0530(2), such disposal site requires reclassification as a Tier I disposal site, unless and until such person submits a Tier I Permit Application.

(3) A Tier I Permit is not required to perform Comprehensive Response Actions at disposal sites where the Department is conducting response actions.

(4) A person who does not have a Tier I Permit for a disposal site for which a Tier I Permit is required shall not perform any Comprehensive Response Actions at such disposal site.

40.0702: continued

(5) No person shall initiate or continue to perform Comprehensive Response Actions at a Tier I disposal site after the Tier I Permit obtained by such person for the Tier I disposal site has expired, unless and until such person obtains a Permit Extension in accordance with 310 CMR 40.0706 and 40.0720.

(6) An application for a Tier I Permit may be submitted to perform Comprehensive Response Actions at a portion of a disposal site that comprises a single parcel of land or multiple parcels of land.

40.0703: Requirements for All Tier I Permit Applications

All applicants for all Tier I Permits shall comply with the following requirements:

(1) Content of Application. Except as expressly provided by 310 CMR 40.0704 through 40.0707, each Tier I Permit application filed with the Department shall include, at a minimum, the following:

- (a) a completed Transmittal Form for Permit Application and Payment using the form established by the Department for such purposes;
- (b) the applicable, completed Permit Application form using the form established by the Department for such purposes;
- (c) the certifications required by 310 CMR 40.0009 and 40.0703(9)(a) and (10);
- (d) the applicable permit application fee payable under 310 CMR 4.00 (to be sent to DEP's Lockbox for payments);
- (e) a photocopy of the fee payment (to be included in the permit application);
- (f) the compliance history required by 310 CMR 40.0703(9)(b);
- (g) the tearsheet(s) from the newspaper(s) containing the legal notice required by 310 CMR 40.0703(8)(a)1., with the date of the publication and name of the newspaper;
- (h) a copy of the cover letter and notices submitted to the Chief Municipal Officer(s) and Board(s) of Health required by 310 CMR 40.0703(8)(a)2.;
- (i) the certification of the Primary Representative, if applicable, required by 310 CMR 40.0703(7); and
- (j) a list of all Status Reports, Phase Reports, or Completion Statements for any of the following response actions that are in progress or have been completed at the disposal site at the time of the Permit application that provides the dates on which such Reports or Statements were submitted to the Department or, for those response actions in progress, a description of the current status and projected schedule for completion of such response actions:
 - 1. any Immediate Response Action under 310 CMR 40.0410;
 - 2. any Release Abatement Measure under 310 CMR 40.0440;
 - 3. any Utility-related Abatement Measure under 310 CMR 40.0460; and
 - 4. notwithstanding 310 CMR 40.0702(2) and (3), any Comprehensive Response Actions in progress or which have been completed pursuant to 310 CMR 40.0800 at the time of the Permit Application.

(2) Conducting Response Actions after Submission and prior to Approval of a Permit Application. An applicant may initiate or continue Preliminary Response Actions pursuant to 310 CMR 40.0400 or Phase II and/or Phase III Comprehensive Response Actions pursuant to 310 CMR 40.0830 and 310 CMR 40.0850, respectively, at a disposal site during the period after a Tier I Permit Application has been submitted and prior to its approval pursuant to 310 CMR 40.0720.

(3) Filing. The applicant shall file an original application with the Department.

(4) Presentation. All data, facts and other information provided in any document submitted with a Tier I Permit application shall be current and presented clearly and concisely. Any supporting material and/or data upon which a Tier I Permit application relies, in whole or in part, shall be included in the Tier I Permit application.

(5) Multiple Applicants. In the event that more than one person is applying for a Tier I Permit, each applicant shall submit:

- (a) the certification required at 310 CMR 40.0009;
- (b) the certification required at 310 CMR 40.0703(9)(a);

40.0703: continued

(c) the compliance history required by 310 CMR 40.0703(9)(b).

(6) LSP Opinions. All Tier I Permit applications shall include an LSP Opinion that such application has been prepared pursuant to the provisions of 310 CMR 40.0000, and shall include the signature and seal of the LSP-of-Record.

(7) Primary Representative.

(a) In the event that more than one person is applying for a Tier I Permit, the applicants shall designate and maintain a Primary Representative authorized to act on their behalf for the following purposes:

1. to receive oral and written correspondence from the Department with respect to the application, as needed;
2. to receive oral and written correspondence from the Department with respect to the performance of response actions conducted pursuant to the Tier I Permit; and
3. to receive any statement of fee required by 310 CMR 4.03(3) associated with the Tier I Permit.

(b) The Primary Representative shall certify in writing to the Department that he or she is fully authorized to act on behalf of the applicants for the purposes stated in 310 CMR 40.0703(7)(a).

(c) Upon submittal of a permit application, receipt of material issued by the Department to the Primary Representative under 310 CMR 40.0703(7)(a) shall be deemed to be received by all permittees.

(d) The Department shall be notified of any change in the designation of the Primary Representative no later than ten days after the effective date of such change through the filing of a Minor Permit Modification by the permittees in accordance with 310 CMR 40.0725.

(8) Public Notice Requirements.

(a) Prior to the submission of a Tier I Permit Application, each applicant or group of applicants shall take the following actions to provide notice to the public of the availability of a Tier I Permit Application for review and comment:

1. a legal notice shall be published in a newspaper that circulates in the community(ies) in which the disposal site is located and in any newspapers that circulate in any other community(ies) which is, or is likely to be, affected by the disposal site; and
2. at least three days prior to publication of the legal notice, a copy of the notice shall be delivered by mail or hand to the Chief Municipal Officer and Board of Health in the community(ies) in which the disposal site is located and in any other community(ies) that is, or is likely to be, affected by the disposal site.

(b) The legal notice required by 310 CMR 40.0703(8)(a) shall be in a form established by the Department for such purposes and shall include, but not be limited to, the following information:

1. the name and address of the disposal site;
2. the DEP Release Tracking Number(s), and the permit number, if one has been assigned;
3. the name, address, and telephone number of the permit applicant(s);
4. the proposed Tier I Permit category of the disposal site, as determined in accordance with 310 CMR 40.0500;
5. the date on or about which the applicant(s) intends to file the application with the Department; and
6. a description of the procedures by which interested persons may review and comment on the permit application.

(c) Interested persons may submit written comments related to a Permit Application within 21 days of the publication of the legal notice required by 310 CMR 40.0703(8)(a)1. Such written comments shall be submitted to the Department by mail or by hand delivery during normal Department business hours and to the Permit applicant.

(d) The Department shall consider and respond as it deems appropriate to public comments submitted in accordance with 310 CMR 40.0703(8)(c).

(e) On its own initiative, the Department may extend the period for submission of public comments.

(f) The notifications required by 310 CMR 40.0703(8)(a) may be included with the notifications required by 310 CMR 40.1403(6) for purposes of compliance with these subsections.

40.0703: continued

(g) Prior to the submission of an initial Tier I Permit application, or the submission of a Major Permit Modification application:

1. to upgrade the Tier I Permit Classification; or
2. to downgrade the Tier I Permit Classification to a Tier IB or a Tier IC;

each applicant or group of applicants shall also submit a notice for publication in the Environmental Monitor as required by 310 CMR 40.1406(1).

(9) Demonstration of Ability and Willingness.

(a) Each applicant shall include the following written declaration with a Tier I Permit application:

"I attest under the pains and penalties of perjury that (i) I/the person(s) or entity(ies) on whose behalf this submittal is made has/have personally examined and am/is familiar with the requirements of M.G.L. c. 21E and 310 CMR 40.0000; (ii) based upon my inquiry of the/those Licensed Site Professional(s) employed or engaged to render Professional Services for the disposal site which is the subject of this permit application and of the person(s) or entity(ies) on whose behalf this submittal is made, and my/that person's(s') or entity's(ies') understanding as to the estimated costs of necessary response actions, that/those person(s) or entity(ies) has/have the technical, financial and legal ability to proceed with response actions for such site in accordance with M.G.L. c. 21E, 310 CMR 40.0000 and other applicable requirements; and (iii) that I am fully authorized to make this attestation on behalf of the person(s) or entity(ies) legally responsible for this submittal. I/the person(s) or entity(ies) on whose behalf this submittal is made is aware of the requirements in 310 CMR 40.0172 for notifying the Department in the event that I/the person(s) or entity(ies) on whose behalf this submittal is made am/is(are) unable to proceed with the necessary response actions."

(b) Each applicant shall include a statement as part of the Tier I Permit application detailing such applicant's history of compliance with the Department's requirements, including, but not limited to, M.G.L. c. 21E, 310 CMR 40.0000, and other laws for the protection of health, safety, public welfare and the environment administered or enforced by the Department and other federal, state and local government agencies, that are material to the disposal site.

(10) Certification of Remittance of Permit Application Fee. Each applicant shall include the following written declaration with a Tier I Permit application:

"I attest under the pains and penalties of perjury that, on or before the date of submittal of this permit application to the Department, I remitted, or caused to be remitted, the applicable permit fee payable in accordance with 310 CMR 4.00."

(11) Information Requests. Each applicant shall submit all additional information requested by the Department subsequent to filing an application, within the time specified by the Department in the Department's request.

40.0704: Additional Application Submittal Requirements for Initial Tier I Permit Applications.

(1) Content of Application. In addition to the requirements in 310 CMR 40.0703, each Initial Tier I Permit application filed with the Department shall include the following:

- (a) the Tier Classification Submittal required by 310 CMR 40.0500, including, without limitation, an LSP Tier Classification Opinion;
- (b) the Phase II Scope of Work or conceptual scope of work required by 310 CMR 40.0500; and
- (c) a statement affirming that notice was submitted for publication in the Environmental Monitor as required by 310 CMR 40.0703(8)(g), and a photocopy of such notice.

40.0705: Additional Application Submittal Requirements for Tier I Permit Transfers

(1) General. No Tier I Permit shall be transferred unless and until the permittee(s) has transferred such Permit pursuant to 310 CMR 40.0720.

(2) Content of Application. In addition to the requirements in 310 CMR 40.0703, an application for permit transfer shall include the following:

- (a) the certification required by 310 CMR 40.0009 from the permittee;

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- (b) written consent by the transferee to the terms and conditions of the Tier I Permit;
- (c) the certification required in 310 CMR 40.0703(9)(a) by the transferee;
- (d) the transferee's compliance history, as required by 310 CMR 40.0703(9)(b); and
- (e) a statement as to why the transfer is sought.

40.0706: Additional Application Submittal Requirements for Tier I Permit Extensions

(1) General.

- (a) No Tier I Permit expiration date shall be extended unless and until the permittee(s) has obtained a Permit Extension in accordance with 310 CMR 40.0720.
- (b) Except as provided by 310 CMR 40.0703(2), no person shall initiate or continue to perform Comprehensive Response Actions at a Tier I disposal site after a Tier I Permit obtained by such person has expired, unless and until such person obtains a Permit Extension in accordance with 310 CMR 40.0720.

(2) Content of Application. In addition to the requirements in 310 CMR 40.0703, an application for a Permit Extension shall include the following:

- (a) a statement as to why the extension is sought; and
- (b) each applicant's compliance history, as required by 310 CMR 40.0703(9)(b), since the effective date of his or her permit only.

40.0707: Additional Application Submittal Requirement for Tier I Permit Major Modifications

(1) General. An application for a Major Permit Modification shall be filed to:

- (a) upgrade a Tier IC disposal site to Tier IA or Tier IB;
- (b) upgrade a Tier IB disposal site to Tier IA;
- (c) downgrade a Tier IC disposal site to a Tier II;
- (d) downgrade a Tier IB disposal site to a Tier IC or Tier II;
- (e) downgrade a Tier IA disposal site to a Tier IB, Tier IC or Tier II; or
- (f) request a modification of any terms or conditions in a Tier I Permit, except as provided by 310 CMR 40.0720.

(2) No Tier I Permit shall be deemed modified unless and until the permittee(s) has filed an application for a Major Permit Modification and such Modification has been approved pursuant to 310 CMR 40.0720.

(3) Content of Application. In addition to the requirements in 310 CMR 40.0703, an application for a Major Permit Modification shall include the following:

- (a) a description of the modification sought;
- (b) if the application is made to modify a Permit category or to reclassify a disposal site as Tier II, an LSP Tier Classification Opinion prepared in accordance with 310 CMR 40.0510(3);
- (c) if the application is made to modify permit terms or conditions, an LSP Opinion as to why the permit terms or conditions are no longer necessary or appropriate, including a report detailing any new or additional information to justify the modification(s) sought, if the application is to modify terms or conditions in a permit;
- (d) each applicant's compliance history, as required by 310 CMR 40.0703(9)(b), since the effective date of his or her permit only; and
- (e) if the application was filed:
 - 1. to upgrade the Tier I Permit Classification; or
 - 2. to downgrade the Tier I Permit Classification to a Tier IB or a Tier IC;a statement affirming that notice was submitted for publication in the Environmental Monitor as required by 310 CMR 40.0703(8)(g), and a photocopy of such notice.

40.0710: Incomplete Permit Applications

An application for a Tier I Permit shall not be deemed complete if the RP, PRP or Other Person who submitted the application (the applicant):

- (1) fails to include all required information, as listed in 310 CMR 40.0703 through 40.0709, and all further information requested by the Department pursuant to 310 CMR 40.0703(11);

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- (2) fails to demonstrate completion of the public notice requirements described in 310 CMR 40.0703(8);
- (3) fails to include all information required by 310 CMR 40.0000;
- (4) fails to include the applicable fee established by 310 CMR 4.00; or
- (5) fails to fill out the application correctly.

40.0720: Approval Process for Tier I Permit Applications, Major Modifications, Transfers or Extensions.

- (1) General. 310 CMR 40.0720 through 40.0729, cited collectively as 310 CMR 40.0720, together with 310 CMR 4.04, define the approval process for Tier I Permit Applications or a Modification, Transfer or Extension of a Tier I Permit.
- (2) The Department shall consider the criteria in 310 CMR 40.0730(1) and 40.0731(1) and all other available information when reviewing a Tier I Permit Application or a Modification, Transfer or Extension submitted pursuant to 310 CMR 40.0700, and when making the following decisions:
 - (a) to grant a Permit, Modification, Transfer or Extension;
 - (b) to grant a Permit, Modification, Transfer or Extension with conditions pursuant to 310 CMR 40.0740(3)(n); or
 - (c) to deny a Permit, Modification, Transfer or Extension.
- (3) Commencement of Schedule. For purposes of 310 CMR 40.0720 and 310 CMR 4.04(2)(a), the computation of time periods shall commence on the day following the day a complete Tier I Permit Application, Modification, Transfer or Extension is received at the appropriate regional office of the Department or on the day following the day the applicable permit application fee is received, as described in 310 CMR 40.0008, whichever occurs later.
- (4) A Tier I Permit or a Major Modification, Transfer or Extension of a Tier I Permit shall be presumed approved without conditions 45 days from the date the complete Application was received by the Department pursuant to 310 CMR 40.0720(3), unless prior to the end of the 45 day period, the Department provides to the applicant(s) one of the following:
 - (a) a Decision to deny the applicant a Tier I Permit or a Major Modification, Transfer or Extension of a Tier I Permit, based upon the criteria in 310 CMR 40.0730 and 40.0731;
 - (b) a Decision to grant the applicant a Tier I Permit or a Major Modification, Transfer or Extension of a Tier I Permit with conditions pursuant to 310 CMR 40.0740(3)(n), based upon the criteria in 310 CMR 40.0730; or
 - (c) a Notice of Extended Review indicating that because of the nature and complexity of the review, based on the criteria set forth in 310 CMR 40.0730(1), the Department requires an additional 45 days from the date the Notice of Extended Review is issued by the Department to complete its review.
- (5) If the Department issues the applicant(s) a Notice of Extended Review in accordance with 310 CMR 40.0720(4)(c), the Tier I Permit or a Major Modification, Transfer or Extension of a Tier I Permit shall be presumed approved without conditions 45 days from the date the Department issued the Notice of Extended Review, unless prior to the end of the 45 day period, the Department provides to the applicant(s) with one of the following:
 - (a) a Decision to deny the applicant a Tier I Permit or a Major Modification, Transfer or Extension of a Tier I Permit, based upon the criteria in 310 CMR 40.0730 and 40.0731; or
 - (b) a Decision to grant the applicant a Tier I Permit or a Major Modification, Transfer or Extension of a Tier I Permit with conditions pursuant to 310 CMR 40.0740(3)(n), based upon the criteria in 310 CMR 40.0730.
- (6) Presumptive approval of a Tier I Permit, Major Modification, Transfer or Extension pursuant to 310 CMR 40.0720 means the RP, PRP or Other Person has approval to proceed with Response Actions in compliance with all applicable provisions of 310 CMR 40.0000. Such presumptive approval shall not be construed as approval by the Department of the scope or adequacy of plans or of the response actions as actually conducted, or as forgiveness of non-compliance with any provision of 310 CMR 40.0000.

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(7) Extensions of Review Schedule by Agreement. The applicant and the Department may, by written agreement, extend any schedule for timely action or individual portion thereof for a Tier I Permit application pursuant to 310 CMR 40.0720 or 310 CMR 4.00.

(8) Tier I Permit, Transfer, Extension or Major Modification Applications Pending as of June 27, 2003. Unless otherwise specified by the Department, Tier I Permit, Transfer, Extension or Major Modification applications pending approval as of June 27, 2003 shall be presumed approved without conditions 45 days from June 27, 2003 or 75 days from the date such application was submitted, whichever date is sooner.

40.0725: Minor Permit Modifications

(1) General. An RP, PRP or Other Person shall notify the Department in writing of any of the following changes after a Permit application has been submitted and prior to submitting a Class A or B Response Action Outcome or Downgradient Property Status for the disposal site where response actions are being conducted under the Permit:

- (a) change(s) in permittee's name or address;
- (b) change in the LSP-of-Record;
- (c) change in the Primary Representative;
- (d) any omissions that do not materially affect the nature or complexity of the permitted response action;
- (e) the addition of one or more RPs, PRPs, or Other Persons as permittees; and
- (f) changes of similar scope to the permit.

(2) Notification of a Minor Permit Modification shall include the following:

- (a) a completed transmittal form using the form established by the Department for such purposes;
- (b) a description of the modification sought;
- (c) an Opinion of a Licensed Site Professional stating the reasons for the modification if the modification is related to any information for which such LSP has submitted an Opinion;
- (d) the certification required by 310 CMR 40.0009; and
- (e) if the application is to add one or more permittees, the following shall be included:
 1. the certification required by 310 CMR 40.0009 from the new applicant(s);
 2. written consent by the new applicant(s) to the terms and conditions of the Tier I Permit;
 3. the certification required by 310 CMR 40.0703(9)(a) by the new applicant(s);
 4. the compliance history of the new applicant, as required by 310 CMR 40.0703(9)(b); and
 5. written consent from the existing permittee(s) or the Primary Representative, whichever is applicable, to the new applicant(s) joining the Tier I Permit.

(3) Minor permit modifications shall not be subject to processing requirements under 310 CMR 40.0720 or 310 CMR 4.00.

40.0730: Department Review of Tier I Permit Applications, Major Modifications, Transfers, or Extensions

(1) In reviewing a Tier I Permit Application or a Modification, Transfer, or Extension of a Tier I Permit, the Department shall consider the following:

- (a) the existence, source, nature, and extent of a disposal site;
- (b) the nature and extent of danger to health, safety, public welfare and the environment posed by the disposal site;
- (c) the magnitude and complexity of the actions necessary to assess, contain, or remove the oil and/or hazardous material in question;
- (d) the extent to which there are legally enforceable standardized methods and criteria available for response actions;
- (e) the extent to which the Department is persuaded that the applicant has the ability and willingness to perform necessary response actions;
- (f) the applicant's compliance history with Departmental and other applicable regulations that is material to the disposal site;
- (g) the extent to which Departmental oversight is necessary to ensure compliance with M.G.L. c. 21E and 310 CMR 40.0000;

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- (h) any permit conditions developed pursuant to 310 CMR 40.0740(3)(n) to which the applicant has consented; and
- (i) any other factor the Department deems relevant to the decision.

(2) The Department shall consider the criteria in 310 CMR 40.0730(1) when reclassifying a Tier Classified disposal site pursuant to 310 CMR 40.0583.

40.0731: Criteria For Denials of Tier I Permits, Major Modifications, Transfers or Extensions

(1) The Department may deny a Tier I Permit, Modification, Transfer or Extension if it determines that:

- (a) the applicant has submitted information in the application for a Tier I Permit, Modification, Transfer or Extension that he or she knew or reasonably should have known was false or misleading;
- (b) the application is not completed by an applicable deadline;
- (c) the Department is not persuaded that the applicant is able or willing to perform necessary response actions in accordance with M.G.L. c. 21E, 310 CMR 40.0000 and other applicable laws;
- (d) the Department is not persuaded that the applicant can properly conduct response actions pursuant to the criteria in 310 CMR 40.0730, after evaluation of information in the Tier Classification Submittal, the application for a Tier I Permit, Modification, Transfer or Extension, and other information material to the disposal site which is available to the Department;
- (e) a valid Tier I Permit is in effect for such disposal site or for a portion of such disposal site; or
- (f) the Department intends to undertake or arrange for the performance of necessary response actions at the disposal site.

40.0740: Conditions Applicable to all Tier I Permits

(1) A permittee performing a response action pursuant to a Tier I Permit, Modification, Transfer or Extension shall comply at all times with M.G.L. c. 21E, 310 CMR 40.0000, the terms and conditions of the permit and any other applicable federal, state or local laws.

(2) In every proceeding, the burden shall be on the permittee to demonstrate compliance with the terms and conditions of a Tier I Permit, Transfer, Modification or Extension at all times.

(3) All Tier I Permits, Modifications, Transfers or Extensions shall be conditioned on at least the following:

- (a) compliance by the RP, PRP, or Other Person undertaking response actions at a disposal site under a Tier I Permit, Modification, Transfer or Extension with the applicable submittal and response action deadlines set forth at 310 CMR 40.0000;
- (b) notification in writing to the Department:
 - 1. as required in 310 CMR 40.0500;
 - 2. upon gaining knowledge of any technical, financial or legal inability to perform any necessary response action, in accordance with 310 CMR 40.0172;
 - 3. upon a decision by a permittee who is performing response actions as an Other Person to not proceed as required by the permit pursuant to 310 CMR 40.0170(10); and
 - 4. of any change in the LSP-of-Record for the disposal site no later than ten days after the effective date of such change through the filing of a Minor Permit Modification by the permittee in accordance with 310 CMR 40.0725;
- (c) compliance with:
 - 1. all applicable submittal requirements, including but not limited to, scopes of work, Status Reports, Completion Statements, Phase Reports, and RAOs;
 - 2. all requirements for record keeping and document retention including, but not limited to, 310 CMR 40.0014, 310 CMR 40.0022 and 310 CMR 40.0023;
 - 3. the Notification Regulations, 310 CMR 40.0300, in the event of discovery of a new release located at the disposal site, threat of release or Imminent Hazard;
 - 4. the management procedures for excavated soils and wastes and requirements for remedial air emissions set forth in 310 CMR 40.0030 and 310 CMR 40.0040; and
 - 5. all public involvement activities required by 310 CMR 40.1400 through 40.1406;

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- (d) inclusion of the Release Tracking Number(s) and the permit number on documents submitted to the Department with respect to the disposal site;
- (e) certification of documents submitted to the Department as required by 310 CMR 40.0009;
- (f) evaluation of the need to perform Immediate Response Actions in accordance with 310 CMR 40.0400 as new or additional information about the disposal site is obtained;
- (g) modification or cessation of any response action as necessary to maintain compliance with any permit condition or to prevent an actual or potential threat to health, safety, public welfare, or the environment;
- (h) notification, orally or in writing, to the Department within 72 hours of obtaining knowledge of the need to modify or cease any response actions for the reasons in 310 CMR 40.0740(3)(g); provided that any such oral notification shall be confirmed by the permittee in writing within 60 days of such oral notice and any written notice shall include a Status Report prepared by an LSP; and timely remediation of any adverse impacts to health, safety, public welfare or the environment that result from the performance of response actions;
- (i) at disposal sites where groundwater investigation is necessary, delineation of the vertical and horizontal extent of contamination, identification and confirmation of groundwater flow directions, identification of groundwater migration pathways including, but not limited to, the identification of possible partitioning of dissolved volatile organic compounds at the water table interface which may lead to vapor transport into subsurface structures, homes or other occupied or unoccupied buildings, and monitoring of groundwater wells, discharges and/or other monitoring points in a manner which provides for the timely development of representative information about conditions and changes in conditions at the disposal site;
- (j) acquisition of all required federal, state and local permits;
- (k) proper operation and maintenance of all treatment, storage, abatement or control systems and of all equipment required to continue or complete response actions;
- (l) authorization for personnel and authorized agents of the Department to enter, at reasonable times and upon the presentation of credentials, any premises owned or controlled by the permittee for the purpose of investigating, sampling, or inspecting any records, conditions, equipment, practice or property relating to response actions at the disposal site, or protecting health, safety, public welfare, or the environment;
- (m) notification upon a change of the Primary Representative as required by 310 CMR 40.0703(7); and
- (n) any other conditions necessary to ensure the appropriate level of Departmental oversight of response actions.

(4) A Tier I Permit does not grant any property rights or exclusive privileges, nor does it authorize any injury to private property or invasion of property rights.

(5) A Tier I Permit Extension obtained under 310 CMR 40.0706 and 310 CMR 40.0720 does not forgive an RP's, PRP's or Other Person's noncompliance with any provisions of 310 CMR 40.0000, including but not limited to, noncompliance that resulted from the late submittal or failure to submit an IRA Plan, Status Report, Phase I Report, Tier Classification, Phase II Report, Phase III Remedial Action Plan, Phase IV Remedy Implementation Plan, and/or failure to achieve a Response Action Outcome. A Tier I Permit Extension means the RP, PRP or Other Person has approval to continue with response actions in compliance with all applicable provisions of 310 CMR 40.0000. Such Extension shall not be construed as approval by the Department of the scope or adequacy of plans or of the response actions as actually conducted.

40.0750: Tier I Permit Effective Date

- (1) A Tier I Permit shall become effective:
 - (a) 45 days from the date the complete Tier I Permit application is received by the Department, if the Permit is presumptively approved without conditions pursuant to 310 CMR 40.0720(4);
 - (b) on the date the Department issues its written approval of the Tier I Permit, if approved with conditions;
 - (c) 45 days from the date the Department issues a Notice of Extended Review, if the Department issues the applicant(s) a Notice of Extended Review in accordance with 310 CMR 40.0720(4)(c) and the Permit is presumptively approved without conditions pursuant to 310 CMR 40.0720(5); or

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(d) on the date the Department issues its written approval of the Permit, if the applicant and the Department by written agreement extend any schedule for timely action or individual portion thereof for the review of a Tier I Permit application pursuant to 310 CMR 40.0720(6) or 310 CMR 4.00.

40.0751: Duration of Tier I Permits

- (1) A Tier I Permit shall be effective for five years from the effective date of the initial Permit, unless otherwise established by the Department.
- (2) Any modification or transfer of a permit shall be effective for the remaining duration of the permit being transferred or modified.
- (3) A Tier I Permit Extension shall be effective for a period of two years beyond the expiration date of the initial Tier I Permit or most recent Tier I Permit Extension, unless otherwise specified by the Department.

40.0760: Tier I Permit Suspension and Revocation

- (1) The Department may suspend or revoke any permit for cause including, but not limited to, the following:
 - (a) any violation of M.G.L. c. 21E, 310 CMR 40.0000, or permit condition, or other applicable law or regulation;
 - (b) the submittal of false or misleading information by the permittee; or
 - (c) for nonpayment of annual compliance assurance fees required pursuant to 310 CMR 4.00.
- (2) Prior to the suspension or revocation of a Tier I permit for cause, the Department shall issue a notice of intent to suspend or revoke a permit which describes the basis for the proposed suspension or revocation and informs the person to whom it is issued of his or her right to request an adjudicatory hearing pursuant to M.G.L. c. 30A.
- (3) Notwithstanding 310 CMR 40.0760(2), suspension or revocation of a permit because of nonpayment of annual compliance assurance fees shall be processed in accordance with 310 CMR 4.03(7).

40.0770: Right to Request An Adjudicatory Hearing

- (1) Any person who is aggrieved by a decision of the Department with respect to any Tier I Permit application may request an adjudicatory hearing before the Department in accordance with 310 CMR 40.0050 and 40.0770(3) if:
 - (a) the Department issues a permit for a category higher than that stated in the LSP Tier Classification Opinion; or
 - (b) the Department denies the applicant a permit, unless the Department notifies the applicant in the permit decision that the Department intends to undertake or arrange for the performance of necessary response actions at the disposal site; or
 - (c) the Department imposes conditions pursuant to 310 CMR 40.0740(3)(n) without the applicant's consent.
- (2) A person shall be deemed to have waived his or her right to an adjudicatory hearing if he or she failed to raise the matter of his or her complaint at the appropriate point during the processing of the application in accordance with 310 CMR 40.0720, provided that a matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to have been raised during the processing of the application.
- (3) A request for an adjudicatory hearing pursuant to 310 CMR 40.0770 shall:
 - (a) comply with 310 CMR 40.0050 and 310 CMR 1.00;
 - (b) include a copy of the permit decision; and
 - (c) state the reason(s) the permit decision does not comply with 310 CMR 40.0000;

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- (4) The adjudicatory hearing shall be limited to the issue of whether the Department's permit decision is in accordance with the criteria set forth in 310 CMR 40.0730 or 310 CMR 40.0731.
- (5) When a request for an adjudicatory hearing is made following receipt of a notice of intent to suspend or revoke a Tier I Permit for cause, allegations made at the adjudicatory hearing shall be limited to whether the Department has cause to suspend or revoke the permit.

SUBPART H: COMPREHENSIVE RESPONSE ACTIONS

40.0800: Comprehensive Response Actions

310 CMR 40.0801 through 40.0899, cited collectively as 310 CMR 40.0800, contain the requirements and procedures for conducting Comprehensive Response Actions at disposal sites.

40.0801: Applicability

The procedures, requirements, and standards set forth in 310 CMR 40.0800 apply to:

- (a) all disposal sites for which a Phase I Initial Site Investigation Report has been prepared in accordance with the provisions of 310 CMR 40.0480, and where additional response actions are necessary to assess the disposal site and/or evaluate and implement Comprehensive Remedial Actions to achieve a Response Action Outcome under 310 CMR 40.1000; and
- (b) all Locations To Be Investigated and disposal sites described in 310 CMR 40.0600 for which a Phase I investigation has been completed and where additional response actions are necessary to assess the disposal site and/or evaluate and implement Comprehensive Remedial Actions.

40.0810: General Provisions for Comprehensive Response Actions

- (1) Comprehensive Response Actions shall be performed in phases. The phases of Comprehensive Response Actions consist of:
 - (a) Phase II - Comprehensive Site Assessment;
 - (b) Phase III - Identification and Selection of Comprehensive Remedial Action Alternatives;
 - (c) Phase IV - Implementation of the Selected Remedial Action Alternative; and
 - (d) Phase V - Operation, Maintenance and/or Monitoring
- (2) The results of each phase of Comprehensive Response Actions shall be documented in one or more reports, and submitted to the Department in a manner specified in 310 CMR 40.0800 and within the applicable deadlines specified in 310 CMR 40.0550 and 40.0560. Where appropriate, Comprehensive Response Action reports may be combined and submitted to the Department simultaneously.
- (3) Each phase of Comprehensive Response Actions shall build upon the results of previous work, continuing until a Response Action Outcome as described in 310 CMR 40.1000 is reached for the disposal site.
- (4) RPs, PRPs and Other Persons conducting Comprehensive Response Actions at disposal sites shall comply with all applicable provisions of 310 CMR 40.0800 and this Contingency Plan.
- (5) RPs, PRPs and Other Persons conducting Comprehensive Response Actions shall engage or employ the services of a Licensed Site Professional.

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(6) The scope and level of detail of response actions taken under 310 CMR 40.0800 shall be commensurate with the nature and complexity of the specific disposal site. The investigation process described in 310 CMR 40.0800 is intended to allow for varying levels of effort from disposal site to disposal site to avoid the collection of unnecessary information and unwarranted steps that could delay remedial actions. In all cases, the scope and level of detail of response actions taken under 310 CMR 40.0800 shall be sufficient to ensure that the applicable requirements and performance standards of these regulations are met, and that the response actions are conducted in a manner consistent with the Response Action Performance Standard as described in 310 CMR 40.0191.

(7) Technical justification, as described in 310 CMR 40.0193, may be provided to limit or forego one or more of the assessment or evaluation elements of 310 CMR 40.0800. Technical justification may not be used to forego procedural requirements, such as the submission of reports, notices or documents required as part of Comprehensive Response Actions under 310 CMR 40.0800. When technical justification is used to forego or limit an assessment or evaluation element, a description of the site-specific conditions and characteristics that make the requirement unwarranted and any documentation necessary to support any such justification shall be provided in the applicable submittal to the Department.

(8) If at any time during the conduct of response actions under 310 CMR 40.0800 an Imminent Hazard, sudden release, or other time-critical release or site condition is identified at a disposal site, as described in 310 CMR 40.0412, Immediate Response Actions shall be performed as set forth in 310 CMR 40.0400.

(9) Comprehensive Response Actions shall be conducted in a manner protective of health, safety, public welfare, and the environment, and in accordance with the Health and Safety provisions of 310 CMR 40.0018.

(10) Nothing in 310 CMR 40.0800 shall limit the ability of the Department to initiate, oversee, or order the performance of any response action deemed necessary by the Department to protect health, safety, public welfare, or the environment or impose additional requirements which are consistent with the purposes on M.G.L. c. 21E or 310 CMR 40.0000.

(11) Notwithstanding any provision to the contrary, the Department may at any time require an RP, PRP or Other Person undertaking Comprehensive Response Actions pursuant to 310 CMR 40.0800 to obtain prior Departmental approval of one or more of the response actions or submittals required pursuant to 310 CMR 40.0800. The Department may require such prior approval for submittals or response actions as they relate to the entire disposal site or to some portion thereof.

40.0830: Phase II - Comprehensive Site Assessment

310 CMR 40.0831 through 40.0849, cited collectively as 310 CMR 40.0830, contain the requirements and procedures for conducting Phase II - Comprehensive Site Assessments at disposal sites.

40.0832: General Provisions

(1) A Scope of Work, as described in 310 CMR 40.0834, shall be developed and submitted to the Department in accordance with 310 CMR 40.0510 prior to the initiation of Comprehensive Site Assessment activities at any disposal site that has been classified as Tier I or Tier II under the provisions of 310 CMR 40.0500, unless the Phase II fieldwork has been implemented prior to Tier Classification.

(2) A Phase II Report, as described in 310 CMR 40.0835, shall be prepared to document information obtained as a result of Comprehensive Site Assessment activities and support conclusions and Opinions based upon the findings of the assessment. The Phase II Report shall reference or incorporate elements of the Phase I Report, as appropriate, and may be combined with the Phase III Report described in 310 CMR 40.0850.

40.0833: Performance Standards

- (1) A Phase II - Comprehensive Site Assessment shall collect, develop and evaluate sufficient information to support conclusions and Opinions regarding:
 - (a) the source, nature, extent, and potential impacts of releases of oil and/or hazardous material;
 - (b) the risk of harm posed by the disposal site to health, safety, public welfare and the environment; and
 - (c) the need to conduct remedial actions at the disposal site.
- (2) The Phase II Report shall thoroughly document, evaluate and discuss the findings and conclusions of the Phase II Comprehensive Site Assessment, and where applicable, provide the basis for identifying and evaluating remedial action alternatives.

40.0834: Phase II Scope of Work

- (1) Except as provided in 310 CMR 40.0834(3), Department approval of the Phase II Scope of Work shall not be required.
- (2) Except as otherwise specified by the Department under 310 CMR 40.0834(3), the Phase II Scope of Work shall include:
 - (a) the scope and nature of investigative and sampling programs that will be undertaken to characterize the source, extent, and migration pathways of oil and/or hazardous material, and the risk of harm posed to health, safety, public welfare or the environment;
 - (b) the name and license number of the LSP engaged or employed by the person conducting the Comprehensive Response Action; and
 - (c) a schedule for implementation of the Phase II - Comprehensive Site Assessment.

40.0835: Phase II Report

- (1) A Phase II Report shall be submitted to the Department at the conclusion of Comprehensive Site Assessment activities pursuant to the applicable deadlines set forth in 310 CMR 40.0550 or 40.0560 or at Interim Deadlines specified by the Department.
- (2) A Phase II Report shall present, contain, or append relevant information, data, findings, and Opinions related to the Comprehensive Site Assessment of the disposal site.
- (3) The Phase II Report shall set forth in narrative and, to the extent possible, in maps, graphs, and tables, the approach, methods and results of the Phase II - Comprehensive Site Assessment.

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(c) the identified alternative cannot comply with or be modified to comply with applicable regulatory requirements.

(7) Benefit-Cost Analysis. The benefits of implementing a remedial action alternative to achieve a Permanent Solution or Temporary Solution and the benefits, when performing a Permanent Solution, of reducing the concentrations of oil and hazardous material in the environment at the disposal site to levels which achieve or approach background or reducing the concentrations of oil and hazardous material in soil at a disposal site to levels at or below applicable soil Upper Concentration Limits shall justify the related costs unless:

- (a) the incremental cost of conducting the remedial action alternative is substantial and disproportionate to the incremental benefit of risk reduction, environmental restoration, and monetary and non-pecuniary values;
- (b) the risk of harm to health, safety, public welfare or the environment posed by the implementation of the alternative cannot be adequately controlled; or
- (c) the alternative would destroy more than 5000 square feet of wetlands or wildlife habitat, or would otherwise result in a substantial deleterious impact to the environment and:
 - 1. other feasible Temporary or Permanent Solutions exist;
 - 2. the oil and/or hazardous materials, if any, that have come to be located in such resources do not bio-accumulate and are not likely to migrate; and
 - 3. the damage to such resources resulting from the implementation of the alternative would be permanent and irreparable.

40.0861: Remedial Action Plan

(1) The results of a Phase III evaluation shall be documented in a Remedial Action Plan. The Remedial Action Plan shall support the selection of a remedial action alternative by providing information of sufficient detail on the process by which the recommended remedial action alternative was developed and evaluated.

(2) A Remedial Action Plan shall contain:

- (a) a description of all remedial action alternatives initially identified and the results of the initial screening;
- (b) where a detailed evaluation is required, a discussion of how the alternatives remaining after initial screening compared with respect to each of the detailed criteria described in 310 CMR 40.0858, and how the criteria were weighted in the evaluation;
- (c) justification for the selection of the proposed remedial action alternative;
- (d) where required, the results of the evaluation under 310 CMR 40.0860 of whether the implementation of a Permanent or Temporary Solution is feasible;
- (e) if a Permanent Solution is selected as the remedial action alternative, a discussion of how the alternative is likely to achieve a level of No Significant Risk;
- (f) if a Temporary Solution is selected as the remedial action alternative, a discussion of how the alternative is likely to eliminate any substantial hazards posed by the disposal site until a Permanent Solution is implemented;
- (g) if a Permanent Solution is selected, the results of the evaluation under 310 CMR 40.0860 of the feasibility of reducing the concentrations of oil and hazardous material in the environment at the disposal site to levels that achieve or approach background, unless the Remedial Action Plan otherwise includes a demonstration that the selected alternative is designed to achieve background and a Class A-1 Response Action Outcome;
- (h) if the selected remedial action alternative is a Temporary Solution, a detailed description of definitive and enterprising steps pursuant to 310 CMR 40.0580 to identify and develop an alternative that is a likely Permanent Solution and a schedule for the implementation of such steps. Such steps may include:
 - 1. performing pilot tests or bench-scale studies;
 - 2. investigating innovative ways to reduce the costs or the risks of implementing a specific alternative; and
 - 3. developing new technologies; and
- (i) a projected schedule for implementation of Phase IV activities pursuant to 310 CMR 40.0870.

40.0862: Phase III Completion Statement

- (1) A Phase III Completion Statement form, established by the Department for such purposes, shall be appended to and submitted with the Remedial Action Plan to the Department.
- (2) In cases where the Phase III Remedial Action Plan is combined with other Comprehensive Response Action Reports, a Completion Statement form for the combined Reports shall be appended to the documents and submitted to the Department.
- (3) A Completion Statement submitted with a Phase III Report shall include the following:
 - (a) an Opinion from a Licensed Site Professional as to the Class of Response Action Outcome under 310 CMR 40.1000 that the selected remedial action alternative is likely to achieve, and whether the Phase III conforms with applicable Phase III requirements and any approval conditions specified by the Department, and meets the Phase III performance standards; and
 - (b) a certification of the submittal required by 310 CMR 40.0009.

40.0863: Public Involvement

- (1) Public Involvement Activities shall be conducted in accordance with 310 CMR 40.1400 through 40.1406. Public Involvement Activities relevant to Phase III specifically include 310 CMR 40.1403(3)(e), and may include, but are not limited to those activities set forth at 40.1406(2).
- (2) If the disposal site where the Phase III is conducted is a Public Involvement Plan site, then a Public Involvement Plan that is consistent with 310 CMR 40.1405 shall be implemented.

40.0864: Possible Outcome

Upon completion of Phase III, the selected feasible remedial action alternative shall be developed and implemented pursuant to Phase IV requirements under 310 CMR 40.0870.

40.0870: Phase IV - Implementation of the Selected Remedial Action Alternative

310 CMR 40.0871 through 40.0889, cited collectively as 310 CMR 40.0870, contain the requirements and procedures for conducting Phase IV Comprehensive Remedial Response Actions at disposal sites.

40.0871: General Provisions

- (1) Phase IV contains requirements for the design, construction, and implementation of the Comprehensive Remedial Action alternative selected as a result of the Phase III evaluation under 310 CMR 40.0850.
- (2) Phase IV activities shall include, without limitation, the following:
 - (a) preparation of a Remedy Implementation Plan (RIP) as set forth in 310 CMR 40.0874;
 - (b) documentation of the construction of the Comprehensive Remedial Action as described in 310 CMR 40.0875; and
 - (c) implementation and final inspection of the Comprehensive Remedial Action.
- (3) Where appropriate, reports and plans prepared required in Phase IV may be combined.

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(4) RPs, PRPs and Other Persons conducting Phase IV activities shall ensure that persons with the appropriate level of training, supervision and applicable licenses or certifications are engaged in the design, construction, operation and maintenance of the Comprehensive Remedial Action.

(5) All federal, state and local permits, licenses or approvals and any agreements necessary for construction and operation of the Comprehensive Remedial Action shall be secured as early in Phase IV as possible in order to avoid delays in implementing the remedial action.

40.0872: Performance Standards

- (1) The Phase IV Implementation of the Selected Remedial Action Alternative shall:
 - (a) ensure that the information, plans and reports related to the design, construction, and implementation of the selected remedial action alternative are sufficiently developed and documented to support the implementation of the Comprehensive Remedial Action;
 - (b) ensure that following initial implementation, the Comprehensive Remedial Action meets design and performance specifications;
 - (c) meet the Response Action Performance Standard for the design, construction, and implementation of the Comprehensive Remedial Action, as described in 310 CMR 40.0191; and
 - (d) conform with all applicable requirements and deadlines set forth in 310 CMR 40.0000.

40.0874: Remedy Implementation Plan (RIP)

- (1) A Remedy Implementation Plan shall be developed for the Comprehensive Remedial Action.
- (2) Technical justification, as specified in 310 CMR 40.0193, may be used to limit or forgo assessment or evaluation elements of the RIP. When technical justification is used, a description of the site-specific conditions and characteristics which make a requirement unwarranted shall be provided in the applicable section of the RIP.
- (3) A RIP shall include, without limitation, the following elements:
 - (a) a list of relevant contacts, including:
 1. names, addresses, and telephone numbers of the RP, PRP or Other Persons responsible for submittal of the RIP;
 2. name, address, and telephone number of the LSP; and
 3. identification of those persons who will own, operate and/or maintain the selected remedial action alternative during and following construction.
 - (b) Engineering Design. The RIP shall document engineering concepts and design criteria to be used for the design and construction of the Comprehensive Remedial Action including as appropriate and without limitation:
 1. goals of the remedial action, including performance requirements of the remedial systems, and/or the requirements for achieving a Response Action Outcome under 310 CMR 40.1000;
 2. any significant changes in or new information related to disposal site conditions which were not included in previous submittals;
 3. disposal site maps showing existing disposal site features and proposed locations of activities associated with the remedial action;
 4. a description of the characteristics, quantity, and location of environmental media or materials to be treated or otherwise managed;
 5. a description and conceptual plan of the activities, treatment units, facilities, and processes to be used to implement the selected remedial action alternative including flow diagrams;
 6. relevant design and operation parameters, including:

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- a. design criteria, assumptions and calculations;
 - b. expected treatment, destruction, immobilization, or containment efficiencies and documentation of how that degree of effectiveness was determined; and
 - c. demonstration that the selected remedial action alternative will achieve the identified remedial goals (may include information from pilot or treatability tests, similar operations, or scientific literature);
7. design features for control of oil and hazardous material spills and accidental discharge or system malfunction, including without limitation: containment structures, leak detection devices, run-off controls, pressure valves, bypass systems, or safety cutoffs;
 8. a description of the methods for management or disposal of any treatment residual, contaminated soils, and other waste materials containing oil and/or hazardous material generated as a result of the selected remedial action alternative;
 9. identification of site-specific characteristics which may affect or be affected by the design, construction, or operation of the selected remedial action alternative, including, but not limited to:
 - a. relationship of the selected remedial action alternative to existing disposal site activities or operations;
 - b. drainage features;
 - c. natural resource areas, local planning and development issues; and
 - d. soil characteristics and groundwater characteristics;
 10. a discussion of measures to be incorporated into the design, construction and operation of the remedial action alternative to avoid any deleterious impact on environmental receptors and natural resource areas (including any surface water or wetland), or where it is infeasible to avoid any such impact, a discussion of measures to minimize or mitigate any impact; and
 11. a general description of inspections and monitoring which will be performed to ensure adequate construction and performance of the remedial action.
- (c) Construction Plans and Specifications. Construction plans shall be prepared in conformance with appropriate engineering and construction standards and practices, and regulations applicable to construction plans and activities. Information on the proposed plans for the construction of the selected remedial action alternative shall be provided in the RIP and include, without limitation, the following:
1. as appropriate, plans, material specifications, and procedures related to the construction of the selected remedial action alternative; and
 2. a schedule for the design and construction of the remedial action alternative.
- (d) Operation, Maintenance and/or Monitoring (OMM). In cases where the Comprehensive Remedial Action for the disposal site requires operation, maintenance and/or monitoring activities to ensure the effective performance and integrity of the Comprehensive Remedial Action and/or the achievement of remedial goals, an Operation, Maintenance and/or Monitoring plan shall be developed and included in the RIP. The OMM plan shall include measures necessary to assure effective operations of the Comprehensive Remedial Action under both normal and emergency conditions. The OMM plan shall include, as appropriate and without limitation, the following:
1. name and telephone number of the person(s) conducting operation, maintenance and/or monitoring activities;
 2. general operating procedures, including start-up, testing, maintenance, shutdown, and emergency or contingency procedures; and
 3. specification of the type, frequency and duration of monitoring, and testing or inspections to ensure and confirm that the remedial action is performing as designed. The frequency of monitoring and/or inspections shall be consistent with the Response Action Performance Standard, as described in 310 CMR 40.0191, and in conformance with the terms of applicable permits, approvals or licenses. At a minimum, the results from operation, maintenance and/or monitoring of a remedial action shall be documented and submitted to the Department every six months in report form as described in 310 CMR 40.0892.
- (e) a health and safety plan, to be followed during the construction and implementation of the Comprehensive Remedial Action, that adheres to the procedures described in 310 CMR 40.0018;

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- (b) for all Class A Response Action Outcomes and where applicable to Class C Response Action Outcomes, a demonstration that all uncontrolled sources, as specified in 310 CMR 40.1003(5) have been eliminated or controlled;
- (c) for all Class A and B Response Action Outcomes, information supporting the conclusion that a level of No Significant Risk has been achieved or exists;
- (d) for all Class C Response Action Outcomes, information supporting the conclusion that no substantial hazards remain at the disposal site;
- (e) for all Class A Response Action Outcomes, information documenting the extent to which levels of oil and/or hazardous material in the environment have been reduced to background, and for all Class A-2 and A-3 RAOs, the results of the feasibility evaluation conducted pursuant to 310 CMR 40.0860 demonstrating that the achievement of background is not feasible;
- (f) for all Class A-4 and B-3 Response Action Outcomes, the results of the evaluation conducted pursuant to 310 CMR 40.0860 demonstrating that the achievement of Upper Concentration Limits in Soil located at a depth greater than fifteen feet from the ground surface or in the area beneath an engineered barrier is not feasible;
- (g) a copy of any and all Activity and Use Limitations certified by the appropriate registry of deeds or land registration office which have been implemented under 310 CMR 40.1070;
- (h) where the RAO is based upon the implementation of an Activity and Use Limitation, an Activity and Use Limitation Opinion accompanied by an Activity and Use Limitation Opinion form prescribed by the Department as specified in 310 CMR 40.1071 or 310 CMR 40.1074, whichever is applicable;
- (i) a description of any operation, maintenance, and/or monitoring that will be required to confirm and/or maintain those conditions at the disposal site upon which the RAO is based; and
- (j) for all Class C Response Action Outcomes, a copy of the plan, as specified in 310 CMR 40.0861(2)(h), which presents definitive and enterprising steps to be taken toward achieving a Permanent Solution at the disposal site.

(3) The Response Action Outcome shall not be considered complete until the Response Action Outcome fee, if applicable, has been paid in accordance with 310 CMR 4.00.

40.1066: Effect of Response Action Outcomes on Fees

(1) Except where response actions are being conducted in accordance with the provisions of 310 CMR 40.0581(1) or 310 CMR 40.0582(1), upon receipt of a Class C Response Action Outcome Statement filed in accordance with 310 CMR 40.1000, the Department shall suspend the further assessment of Tier I or Tier II Annual Compliance Assurance Fees, whichever are applicable, and shall assess a Post-RAO Class C Annual Compliance Assurance Fee pursuant to 310 CMR 4.03.

(2) Upon receipt of a Class A Response Action Outcome Statement filed in accordance with 310 CMR 40.1000 which indicates that Active Operation and Maintenance of a remedial action is not necessary or no longer necessary to ensure the integrity of the RAO, the Department shall suspend the further assessment of Tier I or Tier II Annual Compliance Assurance Fees, or Phase V Operation, Maintenance and/or Monitoring Annual Compliance Assurance Fees whichever is applicable; provided, however, that payment of such fees shall be required for the billable year in which the Response Action Outcome is provided to the Department.

(3) Upon receipt of a Class B Response Action Outcome Statement filed in accordance with 310 CMR 40.1000, the Department shall suspend the further assessment of Tier I or Tier II Annual Compliance Assurance Fees, whichever is applicable.

40.1070: Implementation of Activity and Use Limitations

(1) One or more of the following Activity and Use Limitations shall be implemented at each disposal site or portion of a disposal site where the Activity and Use Limitation is necessary and appropriate to meet the requirements of 310 CMR 40.1012:

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- (a) a Grant of Environmental Restriction, implemented in accordance with 310 CMR 40.1071;
- (b) an Environmental Restriction implemented by the Department, in accordance with 310 CMR 40.1073; or
- (c) a Notice of Activity and Use Limitation, implemented in accordance with 310 CMR 40.1074.

(2) Activity and Use Limitations imposed pursuant to 310 CMR 40.1012 shall be implemented and adhered to by the owner and holders of interest(s) in the property and/or a license to use the property subject to the Activity and Use Limitation, and/or the RP, PRP or Other Person conducting response actions at the disposal site or portion of a disposal site in accordance with the procedures established in 310 CMR 40.1070 through 310 CMR 40.1099.

(3) An Activity and Use Limitation shall be deemed implemented and shall be in effect upon its being duly recorded and/or registered with the appropriate registry of deeds and/or land registration office.

40.1071: Grants of Environmental Restrictions for Disposal Sites Where a RP, PRP Or Other Person Conducts Response Actions

(1) General Requirements At any disposal site or portion of a disposal site where a RP, PRP or Other Person is conducting a response action(s) for which a Grant of Environmental Restriction has been selected as a form of Activity and Use Limitation pursuant to 310 CMR 40.1070, the following requirements shall be met:

- (a) the Grant of Environmental Restriction shall be prepared using Form 1072A or Form 1072C set forth in 310 CMR 40.1099;
- (b) an Activity and Use Limitation Opinion from a Licensed Site Professional shall be submitted on a form prescribed by the Department with each Grant of Environmental Restriction as an exhibit of the Restriction and shall specify:
 - 1. why the Grant of Environmental Restriction is appropriate to:
 - a. achieve and/or maintain a level of No Significant Risk for a Class A or B Response Action Outcome; or
 - b. eliminate a substantial hazard for a Class C Response Action Outcome.
 - 2. Site Activities and Uses to be prohibited and/or restricted;
 - 3. Site Activities and Uses to be permitted; and
 - 4. obligations and conditions necessary to meet the objectives of the Grant of Environmental Restriction;
- (c) the Grant of Environmental Restriction shall be submitted to the Department for the Commissioner's signature with the applicable fee pursuant to 310 CMR 4.00; and
- (d) the Grant of Environmental Restriction, signed by the Commissioner, shall be recorded and/or registered as specified in 310 CMR 40.1071(3). Acceptance of any such Restriction shall not be construed or deemed to imply Department approval of the adequacy of any response actions performed at the disposal site.

(2) Contents of A Grant of Environmental Restriction A Grant of Environmental Restriction shall contain the following information:

- (a) a description of the property and disposal site, including:
 - 1. the location of the property and its street address;
 - 2. a metes and bounds description of the parcel(s) of land which contain(s) the area that is subject to the Grant of Environmental Restriction;
 - 3. a reference to a survey plan of such parcel(s) of land, prepared by a Massachusetts Registered Land Surveyor, that has been recorded as a plan with the appropriate registry of deeds and/or to a Land Court Plan;
 - 4. if the area subject to the Grant of Environmental Restriction (i.e. "the Restricted Area") comprises only a portion of the property described in 310 CMR 40.1071(2)(a)2, a metes and bounds description of the Restricted Area; and:
 - a. (for registered land only) an 8 1/2" x 11" survey plan, prepared by a Massachusetts Registered Land Surveyor, which shows the metes and bounds of the Restricted Area, attached as an exhibit to the Grant of Environmental Restriction; or

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- (a) any and all holders of a prior interest in the Restricted Area, and
- (b) from any and all holders of a prior interest in the Property insofar as such interest affects those interests created under the Grant of Environmental Restriction.

40.1072: Process for Applying for a Grant of Environmental Restriction

- (1) The Department shall review each application for a Grant of Environmental Restriction to ensure that it conforms to all requirements established herein for such instrument.
- (2) An application for a Grant of Environmental Restriction shall consist of:
 - (a) a completed Form 1072A and, if applicable, Form 1072B, set forth in 310 CMR 40.1099,
 - (b) all other applicable documents set forth in 310 CMR 40.1071; and
 - (c) a certification of title issued to the Department by an insured title examiner certifying title in the Grantor, and including all encumbrances of record.
- (3) An application for a Grant of Environmental Restriction shall not be deemed complete if the Department determines that a Grant of Environmental Restriction application:
 - (a) fails to contain all required information listed in 310 CMR 40.1071;
 - (b) fails to include the applicable fee established by 310 CMR 4.10(10)(g)(4); or
 - (c) is incorrectly filled out.
- (4) The Department has no obligation to accept or review an incomplete Grant of Environmental Restriction application.
- (5) Processing a Grant of Environmental Restriction Application. For purposes of 310 CMR 4.10(10)(g), the computation of time periods shall commence on the day following the day a Grant of Environmental Restriction application is received at the appropriate Department office or on the day following the day the Grant of Environmental Restriction application fee is received, whichever occurs later.
 - (a) The applicant and the Department may, by written agreement, extend any schedule for timely action or individual portion thereof for a Grant of Environmental Restriction application pursuant to 310 CMR 4.00 and 310 CMR 40.1072.
 - (b) Administrative Completeness Review. The Department shall conduct an Administrative Completeness Review of a Grant of Environmental Restriction Application in accordance with 310 CMR 4.00 and 310 CMR 40.1072. The Administrative Completeness Review shall determine whether all required elements of the application have been submitted by the applicant.
 1. Initial Administrative Completeness Review (AC-1). The initial AC-1 review shall comply with the following requirements:
 - a. The AC-1 Review shall result in a written determination of administrative completeness or a statement of administrative deficiencies.
 - b. A determination of administrative completeness shall mean that the permit application may proceed to Technical Review.
 - c. A statement of administrative deficiencies shall end the AC-1 review period.
 - d. The Department shall send a determination of administrative completeness or a statement of administrative deficiencies to the applicant in writing within 31 days of the date a Grant of Environmental Restriction application is received at the appropriate Department office or on the day following the day the Grant of Environmental Restriction application fee is received, whichever occurs later. If the application is not complete, the Department shall identify the information necessary to complete the application in the statement of administrative deficiencies.

NON-TEXT PAGE

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2. Second Administrative Completeness Review (AC-2). If the Department issues a statement of administrative deficiencies, a second Administrative Completeness Review, AC-2, shall be conducted upon submittal of additional information by the applicant. Such AC-2 review shall be conducted in accordance with the following requirements:
 - a. If the Department issues a statement of administrative deficiencies, the Department shall have an additional 30 days for a second Administrative Completeness Review, AC-2, beginning the day after receipt of material submitted by the applicant in response to the statement of administrative deficiencies issued in AC-1
 - b. The Department may request additional information during the course of AC-2 review.
 - c. The AC-2 review shall result in a determination of administrative completeness or a denial of the permit application.
 - d. A denial of the permit application shall be subject to appeal in accordance with 310 CMR 40.0050, provided that in any adjudicatory hearing the issues shall be limited to the question of whether or not the application submitted was administratively complete. If the applicant prevails in such proceeding, the Department shall begin the next step of its review pursuant to the schedule for timely action.
3. Effect of Determination. A determination of administrative completeness shall not constitute any finding with respect to the technical suitability, adequacy or accuracy of the materials submitted, and shall be no bar to a request to amend, revise, replace, or supplement such materials based on technical suitability, adequacy or accuracy.
- (c) Technical Review of Grant of Environmental Restriction Applications. The Department shall conduct a Technical Review of each Grant of Environmental Restriction application to ensure that it conforms to the requirements established herein for such instruments. This review shall ensure that:
 1. the instrument provides adequate and appropriate identification of property subject to the Grant of Environmental Restriction;
 2. the person granting the Grant of Environmental Restriction is the owner of record;
 3. all prior interests in the Restricted Area have been subordinated; and
 4. the activities to be restricted, permitted, performed, and conditioned are clearly specified.
- (d) Procedures for Initial Technical Review (T-1).
 1. An Initial Technical Review shall result in a decision to approve the Grant of Environmental Restriction, or in a statement of technical deficiencies in the application and supporting materials. The Department's decision to issue a statement of deficiencies shall not be deemed to give rise to any right to an adjudicatory hearing.
 2. An initial T-1 review shall be conducted in accordance with the following requirements:
 - a. The Department may request additional information during the course of T-1 review.
 - b. A statement of technical deficiencies shall end the T-1 review period.
 - c. An applicant shall respond within 30 days of the date of issuance of a statement of technical deficiencies by submitting any additional material to support the application and address deficiencies.
 3. If the applicant fails to respond to a statement of technical deficiencies, the application shall be reviewed on the record.
 4. As established in 310 CMR 4.10(10)(g), and except as agreed pursuant to 310 CMR 40.1072(5)(a), the Department shall have 60 days to complete its T-1 review from the date of the Department's determination of administrative completeness.
- (e) Supplemental Technical Review (T-2).
 1. The purpose of a supplemental technical review (T-2) is to allow the Department to review technical information submitted by the applicant in response to a statement of technical deficiencies issued in T-1.

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2. A T-2 review shall result in a decision to approve or disapprove a Grant of Environmental Restriction.
3. Except as agreed pursuant to 310 CMR 40.1072(5)(a), the Department shall have an additional 45 days for a T-2 review from the day after the receipt of material submitted by the applicant in response to a statement of technical deficiency.
4. The Department may request more information at any time during the T-2 review.

(6) Approvals of Grants of Environmental Restrictions.

- (a) For each application for a Grant of Environmental Restriction, the Department shall prepare a statement specifying that the application is approvable, or, as appropriate, a statement describing the basis for disapproving the application.
- (b) The Department's review shall be limited to determining whether the proposed Grant of Environmental Restriction meets the requirements of 310 CMR 40.1071.
- (c) The Department's review shall not encompass issues concerning the adequacy of response actions at the subject disposal site (including whether the release and any associated risks have been adequately characterized, and whether the Activity and Use Limitation Opinion provides an adequate basis for a finding that a level of No Significant Risk exists or has been achieved) or that substantial hazards have been eliminated.
- (d) The Department may disapprove an application for a Grant of Environmental Restriction if it determines that:
 1. the application does not provide adequate and appropriate identification of the property to be subject to the Grant of Environmental Restriction;
 2. the person granting the Grant of Environmental Restriction is not the owner of record;
 3. all prior interests in the Restricted Area have not been subordinated;
 4. the activities to be restricted, permitted, performed, and conditioned are not clearly specified; or
 5. the application is not completed by an applicable deadline, or contains information which the applicant reasonably knew or should have known was false or misleading.

40.1073: Environmental Restrictions for Disposal Sites Where the Department Conducts Response Actions

- (1) The Department may impose Environmental Restrictions upon any disposal site for which the Department conducts a response action. Any Environmental Restriction imposed by the Department shall be recorded and/or registered in the appropriate Registry of Deeds and/or Land Registration Office.
- (2) The Department may impose and record and/or register an Environmental Restriction if the property owner fails to record or register an Environmental Restriction in accordance with 310 CMR 40.1071, and may seek to recover the Costs thereof.
- (3) In the event that the Department establishes an administrative record pursuant to 310 CMR 40.1300 for a response action that consists, in whole or in part, of the imposition of an Environmental Restriction by the Department, the Department shall include the Environmental Restriction in the administrative record.
- (4) In the event that the Department does not establish an administrative record pursuant to 310 CMR 40.1300 for a response action that consists, in whole or in part, of the imposition of an Environmental Restriction by the Department, the Department shall provide to the following persons notice of such intent to impose an Environmental Restriction:
 - (a) any owner of the property whose name and address is known to the Department;
 - (b) any other person having a recorded or registered ownership interest in the property whose name and/or address is known to the Department;
 - (c) any person having an unrecorded or unregistered ownership interest in the property whose interest, name and address is known to the Department; and
 - (d) any person having an unrecorded or unregistered ownership interest in the property whose interest, name, and address is unknown to the Department.